

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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**WILLIAM DAMON AVERY,**

Plaintiff,

vs.

**CITY OF MILWAUKEE, et.al.,**

Defendants.

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Case No. 11-CV-408

Milwaukee, Wisconsin

June 3, 2015

**VOLUME 3 - PAGE 317**  
TRANSCRIPT OF TRIAL  
BEFORE THE **HONORABLE RUDOLPH T. RANDA,**  
UNITED STATES DISTRICT JUDGE, AND A JURY

**A P P E A R A N C E S**

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Proceedings recorded by mechanical stenography, transcript  
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I N D E X

<u>Witness:</u>	<u>Page</u>
<b>CAPTAIN TIMOTHY HEIER</b>	
Direct Examination By Ms. Hoft.....	322
Cross Examination By Mr. Smokowicz.....	359
Redirect Examination By Ms. Hoft.....	367
Recross Examination By Mr. Smokowicz.....	373
<b>JEFFREY KIMBROUGH</b>	
Direct Examination By Mr. Elson.....	375
Cross Examination By Mr. Smokowicz.....	385
<b>KEITH RANDOLPH</b>	
Direct Examination By Ms. Hoft.....	400
Cross Examination By Mr. Smokowicz.....	414
Redirect Examination By Ms. Hoft.....	444
Recross Examination By Mr. Smokowicz.....	446
<b>GILBERT HERNANDEZ</b>	
Direct Examination By Mr. Stainthorp.....	451
Cross Examination By Yuan.....	508
Redirect Examination By Mr. Stainthorp.....	523

**TRANSCRIPT OF PROCEEDINGS**

THE CLERK: Case Number 11-C-408, William Avery versus the City of Milwaukee, et.al. Called for a continuation of the jury trial. May I have the appearances, please. First for the Plaintiff.

MS. HOFT: Janine Hoft, one of the lawyers for the Plaintiff, William Avery.

MR. ELSON: Ben Elson for William Avery.

MR. STAINTHORP: John Stainthorp for William Avery.

THE COURT: Good morning.

MR. ELSON: Good morning.

THE CLERK: And for the Defendants?

MR. SMOKOWICZ: Assistant City Attorney Jan Smokowicz. Good morning, Your Honor.

THE COURT: Good morning.

MS. YUAN: Good morning, Your Honor. Assistant City Attorney Jenny Yuan.

THE COURT: Good morning. The Bailiff informs me that there's a matter to take up. The Defendants want to bring something to the Court's attention?

MR. SMOKOWICZ: Just a couple of small items. First of all, yesterday we did redact, in accordance with the Court's ruling, the question and the answer in Antron Kent's Exhibit, which has been marked as Exhibit 1050. It was read as part of the Plaintiff's case, and we certainly would be offering it I

1 guess with the Plaintiffs at this time into evidence.

2 THE COURT: No objection?

3 MS. HOFT: No objection.

4 THE COURT: The Court will receive it.

5 MR. SMOKOWICZ: Second item, Your Honor, is yesterday  
6 we did have a side-bar. Perhaps we should just make a record of  
7 what was discussed there, if the Court is willing to do that.

8 THE COURT: Yes. Of course.

9 MR. SMOKOWICZ: We did raise an objection yesterday as  
10 to any questions of Detective DeValkenaere with respect to his  
11 involvement in the investigation of Jessica Payne. In  
12 particular, with respect to questioning of witnesses that he did  
13 of the alleged co-actors. And the subsequent biological  
14 evidence that linked Jessica Payne to Walter Ellis as irrelevant  
15 and unfairly prejudicial -- pardon me. Not irrelevant as --  
16 well, inadmissible as a prior bad act, or other bad act, as that  
17 being the only purpose that it could be offered for. I  
18 believe -- certainly don't want to speak for them, but I believe  
19 the Plaintiffs argued in part that they believed it was relevant  
20 to the Monell claim, and the Court entered a ruling allowing  
21 limited questioning in that area.

22 THE COURT: I think that's a correct statement of the  
23 sidebar.

24 MR. STAINTHORP: Yes, Judge. No disagreement with  
25 that. But I was under the impression that the sidebars were

1 recorded. Is that incorrect? Okay. Fine.

2 THE COURT: They're not.

3 MR. STAINTHORP: Okay. I just saw the Court Reporter  
4 working hard while we were at sidebar, so I just presumed that  
5 it was -- that it was being somehow transmitted to her. But  
6 okay.

7 THE COURT: She gives out that impression.

8 MR. SMOKOWICZ: I was going to say she's always  
9 working hard, Judge.

10 THE COURT: We're ready to go? All set?

11 MR. SMOKOWICZ: I believe we are, Your Honor. Yes we  
12 are, Your Honor.

13 THE COURT: Okay.

14 MR. SMOKOWICZ: I should advise the Court -- I should  
15 advise the Court we have prepared a written stipulation and  
16 order for Detective Gulbrandson's dismissal. I sent it by  
17 E-mail, but Mr. Stainthorp hasn't had access to it. I guess  
18 they're going to look at it tonight.

19 THE COURT: Okay.

20 (Whereupon the jury was returned to the courtroom at  
21 9:13 a.m.)

22 THE COURT: Good morning, ladies and gentlemen of the  
23 jury. We're now ready with the next witness.

24 MS. HOFT: The Plaintiff, Your Honor, calls Defendant  
25 Heier to the stand.

1                   **CAPTAIN TIMOTHY HEIER**, called as a witness, having  
2       been first duly sworn, on oath testified as follows:

3                   THE CLERK: Please state your full name and spell your  
4       last name for the record.

5                   THE WITNESS: Timothy Heier. T-I-M-O-T-H-Y.  
6       H-E-I-E-R.

7                                   **DIRECT EXAMINATION**

8       **BY MS. HOFT:**

9       Q. Good morning, Mr. Heier.

10      A. Good morning.

11      Q. How are you?

12      A. Very good.

13      Q. What is your current position?

14      A. Currently I'm a Captain with the Milwaukee Police  
15      Department, and I'm assigned to the Internal Affairs section.

16      Q. And how long have you been working at the Milwaukee Police  
17      Department?

18      A. I'm in my 24th year. Or actually 25th year. 24 complete.

19      Q. And have you ever testified before?

20      A. Yes.

21      Q. You've testified a number of times before, is that right?

22      A. Yes.

23      Q. Would you say you've testified more than 100 times?

24      A. Yes.

25      Q. You came into the Homicide Division of the Milwaukee Police

1 Department in 2000, is that about accurate?

2 A. Yes.

3 Q. And when you came into the Homicide Department, you were  
4 aware that from about 1998 there had been a number of unsolved  
5 homicides of females in the area of the north side of Milwaukee,  
6 is that correct?

7 A. No. Usually what we do is the City of Milwaukee has  
8 approximately 90 to 100 homicides. And basically we just  
9 respond to whatever pressing homicide calls in that night and  
10 just work forward. When we get information on older homicides,  
11 then we go backwards and look at those. So in about 2000 I  
12 wouldn't have known the trends or anything -- of anything that  
13 happened earlier, unless I'm specifically assigned to one of  
14 those cases.

15 Q. Do you recall, though, that a couple years earlier from when  
16 you joined the Homicide Department, that a number of prostitutes  
17 had been found dead and their murders were unsolved?

18 A. Yeah. I have no direct recollection of either working on  
19 those cases, or getting follow-up, or knowing much of a trend  
20 like that.

21 Q. I understand you may not have worked on those cases, but  
22 were you aware when you came into the Homicide Department in  
23 2000, that in 1998 there had been a number of unsolved homicides  
24 of prostitutes in the north side of Milwaukee?

25 A. Yeah. I have no direct recollection.

1 Q. Do you recall giving a deposition in this case?

2 A. Yes.

3 Q. And that was on July 10 of 2012?

4 A. Yes.

5 Q. And did you -- do you recall being asked this question and  
6 giving this answer -- and I'm on Page 139, counsel.

7 MR. SMOKOWICZ: Just a second. What line?

8 MS. HOFT: Lines 2 through 8. 9, sorry.

9 MR. SMOKOWICZ: Thank you.

10 MS. HOFT:

11 Q. How about when you were there? Did you have any awareness  
12 of a group of unsolved female homicides, particularly in the  
13 north Milwaukee area? Would that be a concern of the  
14 Department? Answer: Well, obviously. This was 1998, and I  
15 believe there were some before I came here. I mean, if I came  
16 in 2000, this was a couple years earlier when prostitutes were  
17 found. Do you recall giving that testimony?

18 MR. SMOKOWICZ: Your Honor, for purposes of completion  
19 I'd like to read the rest of the answer.

20 MS. HOFT: Your Honor, we would object. He can do  
21 this on his redirect.

22 THE COURT: All right. Let's -- for purposes of  
23 smoothness you can do that, Mr. Smokowicz, on your examination  
24 of Mr. Heier.

25 MR. SMOKOWICZ: Very well, Your Honor. Thank you.



1 MS. HOFT:

2 Q. Do you recall giving that testimony?

3 A. Yeah. The question you asked, would this have been of  
4 concern to the Department? Yes. Yes, it would be concerning to  
5 the Department, anything prior to. And again, I don't have any  
6 independent recollection of working on any of those cases. But  
7 if the question as you stated in the deposition in 2010 was  
8 would this be concern to the Department of a lot of deaths of  
9 prostitutes in the 1998 -- yes.

10 Q. Did you -- do you recall me asking you questions at a  
11 deposition?

12 A. Yes, I recall it was I think 710 North Plankinton. I sat  
13 for about 5 hours.

14 Q. You sat for about 5 hours with a lawyer by the name of  
15 Heather Donald. Do you remember that?

16 A. Yes, I remember -- yes.

17 Q. I've never questioned you before?

18 A. Right. But I remember staying for about 5 hours, going  
19 through lots of questions.

20 Q. Okay. And so do you recall now that when you came into the  
21 Homicide Department in 2000, you knew that a couple years  
22 earlier there had been a number of female prostitutes who'd been  
23 murdered on the north side of Milwaukee, and that their cases  
24 were unsolved?

25 MR. SMOKOWICZ: Objection. Asked and answered.

1 THE COURT: Well, it's sort of a summation question.  
2 He may answer.

3 THE WITNESS: Could you -- I mean, just for the --  
4 because you're going to point this answer that I gave in 2010.  
5 Could you repeat that question for us? Because I remember that  
6 question being is it a concern to the Department? Yeah. Yes,  
7 it's a concern of the Department. And yes, there were numerous  
8 homicides in '98, and I've known that since. You know, since  
9 then I'm aware of that, yes. If that can summarize what you're  
10 trying to get.

11 MS. HOFT:

12 Q. I hear what you're saying. Actually, your deposition was in  
13 2012. But I hear what you're saying. You're trying to remember  
14 the question and answer you gave in 2012. But I'd ask that that  
15 last question be read back, and I'd ask you to give an answer  
16 today.

17 A. Sure. The question from 2010 you're going to read back?

18 Q. No. I'm going to ask Heidi, the Court Reporter to read back  
19 the question that I asked you.

20 A. I can probably make it easier. When I came on in 2012 --  
21 and like I stated, we work forward homicides, and whatever  
22 historical had taken place on the north side of the women --  
23 yes, there were a lot of homicides that occurred back then.  
24 I've known a lot more since then. Would I have known that  
25 walking in, in 2000, 2001, of the amount of homicides? I don't

1 know if I would have known that then. But yes, I'm aware of  
2 that now. If that helps.

3 Q. A little bit. Thank you.

4 A. Okay. I'm not trying to dodge your question or anything. I  
5 just want to make it as clear as I can be so everybody  
6 understands. When I came on in 2000, what happened prior? I  
7 didn't have a lot of working on those.

8 Q. I understand that. And as the Judge indicated, what I was  
9 trying to ask you was a summation question with regard to when  
10 you came on to the Homicide Division in 2000, you were aware  
11 that there were a number of not just random homicides, but a  
12 number of unsolved female homicides of prostitutes in the north  
13 side of Milwaukee?

14 MR. SMOKOWICZ: Objection, Your Honor. This has been  
15 asked and answered. This is not summation.

16 THE COURT: Well, are we talking a certain time frame?  
17 He came on in 2000. Was he aware of a number of homicides? Is  
18 that the question?

19 MS. HOFT: I can ask a different question.

20 Q. I think the issue is clear about 1998. That you were aware,  
21 around the time of 1998, there were these unsolved female  
22 prostitute homicides in the area of north Milwaukee when you  
23 came on to the Homicide Division in 2000?

24 A. No, I had -- I didn't have that much knowledge or  
25 recollection of anything that happened prior to in that area.

1 Q. And when you say prior to, you mean prior to you coming on  
2 the Homicide Division?

3 A. Yeah. I'm kind of unfamiliar with what direction you're  
4 going with the question. In 2000 when I came on, I didn't have  
5 a historical reference of what happened in '98 in those areas,  
6 because I was investigating a different -- different types of  
7 crimes. I wasn't involved in homicides. So coming in new, I  
8 didn't know -- I'm new to the homicide. I'm just learning that.  
9 And we're working day-by-day forward.

10 Q. Where were you working just prior to joining the Homicide  
11 Department in 2000?

12 A. In 2000 I was -- well, I'll give you a little bit more. In  
13 1998, '97 and '98, I was a dispatcher. So I had not worked the  
14 streets in that capacity. I just dispatched squads. I worked  
15 in an office with a headset, looking at a computer, dispatching  
16 squads. In 1999 I got promoted to a Detective, and I worked  
17 just a variety of things. From burglaries, to robberies, to  
18 auto thefts, to violent crimes. The Milwaukee Police Department  
19 has a specialized division which is the Homicide Division. That  
20 when a homicide happens, we put particular people in those  
21 assignments to investigate. So as far as getting trends or  
22 briefings, I wouldn't have been part of those until obviously  
23 getting on the unit in 2000.

24 Q. And in 1999 did the Detective Division that you were  
25 assigned to -- did it share a building with the Homicide

1 Division?

2 A. Yes. As a matter of fact, we not only shared a building, we  
3 shared the same floor. One section is homicide, and one section  
4 is everybody else. But I'll say it's an elite unit because I  
5 was part of it. But the Homicide Division does a lot of things  
6 different. They pass information along to themselves. They  
7 brief in reoccurring shifts before each shift and after each  
8 shift, so it's a specialized unit because of the seriousness of  
9 these cases, and the ability to solve them.

10 Q. When were you first made aware of the homicide of Maryetta  
11 Griffin?

12 A. The first time that I was involved in that case?

13 Q. And I'm not asking you the first time you were involved.  
14 I'm asking you the first time you heard about the death of  
15 Maryetta Griffin.

16 A. I would say March of 2001.

17 Q. So you'd never heard anything about her before that date?

18 A. No.

19 Q. And when you came on to the Homicide Division, when you got  
20 there -- when you eventually got there, you had meetings and  
21 briefings daily with other homicide Detectives. Is that fair to  
22 say?

23 A. Yes.

24 Q. And those briefings occurred at the beginning of your shift,  
25 and at the end of your shift?

1 A. Yes.

2 Q. And do you recall what shift you were working back in 2000?

3 A. It was early shift, which is 4:00 to midnight.

4 Q. And in 2001 was that still true?

5 A. Yes. It was actually all the way until 2009, when I got  
6 promoted. I was always a 4:00 to midnight.

7 Q. And part of your job as a homicide Detective was to  
8 interview people. Is that fair to say?

9 A. Yes.

10 Q. And when you interview a person, you don't read them Miranda  
11 rights, correct?

12 A. It depends who we interview. I mean, some people are  
13 involved in a crime, and obviously the statement can be used  
14 against them. And we want to advise them and let them know that  
15 they're entitled to certain rights.

16 Q. But unless you're going to question a person and you think  
17 you might use their statements against them, you don't give them  
18 Miranda rights, right?

19 A. No, because you don't -- you don't know who you're going to  
20 talk to. I mean, certainly clearly somebody witnesses a  
21 homicide, witnesses a robbery, you're not going to Mirandize  
22 them. But if there's a possibility that they have involvement  
23 later on, what you don't want to do is take a full statement, in  
24 which case they confess. And oftentimes it's easier just to  
25 advise them of their Miranda rights, Constitutional rights.

1 Q. And maybe my question and your negative answer got a little  
2 confused there, but let me ask you this. You don't Mirandize an  
3 individual unless you think they might give a statement that you  
4 want to use in court?

5 A. Yes.

6 Q. And --

7 A. To hold against them in court, yes. That they would be  
8 involved. Sorry I'm walking over you.

9 Q. Yeah.

10 A. Go ahead.

11 Q. And with regard to giving Miranda rights, one of those  
12 rights is the right to remain silent?

13 A. Yes.

14 Q. And one of those rights is the right to have a lawyer,  
15 right?

16 A. Yes.

17 Q. And once an individual or a suspect invokes either of those  
18 rights, you must immediately stop interviewing, interrogating,  
19 whatever you want to call it, with the person, right?

20 A. Yes. Generally we stop interviewing, yes.

21 Q. What do you mean by generally we stop interviewing?

22 A. If they want to remain silent, it's -- sometimes you don't  
23 like just walk out immediately. Sometimes I've stayed for 5  
24 minutes and answer any questions. And that's it. Sometimes  
25 they don't want to talk about the incident, but then they keep

1 talking and ask more questions, and I can't talk about that.  
2 But it's not somebody that's -- if somebody asks for a lawyer  
3 you walk away, yes.

4 Q. Okay. But if somebody says they don't want to give a  
5 statement, or they want to invoke their right to silence, you  
6 don't necessarily walk away?

7 A. No. What I'm saying is that oftentimes people keep talking.  
8 I mean, they say they don't want to talk about something. Or  
9 they say I want my lawyer. I don't want to talk. But then they  
10 keep talking for 5 minutes later. And it's something that  
11 lawyers look to say well, if you don't ask questions, if you  
12 don't continue, if they say hey, I want a lawyer, but I want to  
13 tell you something else, I want to tell you -- and they just  
14 keep talking, you silently sit there and just listen. And  
15 clearly something -- lawyers have to weigh the use of those  
16 statements later on. But if somebody says they want a lawyer,  
17 the questioning does stop.

18 Q. But if someone keeps talking, you will stay there and  
19 listen, as long as they keep talking?

20 A. That's exactly right.

21 Q. Okay. And with regard to the conversations that may come up  
22 after an individual has said they want to remain silent, have  
23 you ever told -- or get a lawyer, have you ever told a suspect  
24 that if they get a lawyer it may be too late for a deal?

25 A. No.



1 Q. Is it true that if an individual stops talking to you and  
2 says they want a lawyer, that then you can't work with them to  
3 get a statement that could be used in their favor or to mitigate  
4 their crime?

5 A. If somebody asks for a lawyer, it stops. I'll give you an  
6 example. If somebody keeps talking, and wants to talk, and  
7 wants to reinitiate, oftentimes what I do is I explain to them  
8 okay, with time out you asked for a lawyer. And these  
9 statements are written down. These are -- nowadays, moving  
10 forward, they're recorded. Back in this case they did not have  
11 the technology. They didn't record these things. But you  
12 oftentimes explain what they did. And there's a lot that goes  
13 on, as far as you asked for a lawyer, but if you want to  
14 continue talking, there are ways -- you know, you have to waive  
15 again. So we re-advise them again, because somebody still wants  
16 to talk.

17 Q. Tell me when the technology came in to the Milwaukee Police  
18 Department that allowed for the recording of interrogations?

19 A. Well, this was something that was demanded by the State in  
20 1998 -- 2001 -- the recording -- things were recorded. You  
21 actually wrote down statements. You went over statements. You  
22 had people sign the statements. Everything was memorialized.  
23 Everything was recorded. In the State of Wisconsin moving  
24 forward -- I don't know the exact year they requested that  
25 things be audiotaped. So they presented -- the Departments had

1 to buy recorders that --

2 Q. I'm sorry. My -- I don't mean to stop you, but I believe  
3 your question is you don't -- the answer is you don't know?

4 A. I don't know exactly. It was mandated by the State. But I  
5 don't know what year.

6 Q. Okay. In 2000 when you came into the Homicide Division, you  
7 had to write reports. And I think that's what you were  
8 explaining to the jury. That things were recorded. Not in any  
9 technologically advanced way, but in writing on pieces of paper.  
10 Right?

11 A. Yes.

12 Q. And in 2000 when you came into the Homicide Department, you  
13 would write out your documents, documentation of your  
14 interviews, and then you would speak into some sort of dictation  
15 device or tape recorder so that those reports could be  
16 typewritten, right?

17 A. Yes. After the fact, yes.

18 Q. But you had that technology to dictate into a recording  
19 device the contents of your statement so that they could be --  
20 or your report so that they could be retyped?

21 A. Yeah. It was a telephone that you would talk to. You would  
22 pick it up, and you would dictate your -- you'd write verbatim  
23 whatever you wrote on a piece of paper, because some people's  
24 handwritings are different. You would dictate into a telephone.  
25 And we had secretaries and clerks that would literally type

1 everything we just said into a phone.

2 Q. And you mentioned previously that in 2001 you first became  
3 aware of the death of Maryetta Griffin. And her death was in  
4 1998, right?

5 A. Yes.

6 Q. And you had an assignment to go talk to an individual by the  
7 name of Keith Randolph, is that right?

8 A. Yes.

9 Q. And before you went to talk to Mr. Randolph, did you speak  
10 to anyone?

11 A. I started the day -- it was March 21st, 2001. I started at  
12 4 o'clock, and my assignment that day from my supervisor was  
13 Keith Randolph was at our Department with his Attorney. And my  
14 job was to interview him. He had information on a homicide.

15 Q. And I'm sorry. Maybe I missed it in your answer. But who,  
16 if anyone, did you talk to?

17 A. A supervisor would have assigned me that.

18 Q. Do you remember what supervisor made that assignment?

19 A. No.

20 Q. And after you received that assignment, did you review  
21 anything?

22 A. Not that I recall.

23 Q. And you don't remember talking to anyone except the  
24 supervisor prior to meeting with Mr. Randolph?

25 A. Yes. His attorney was present also. Mr. Caton.

1 Q. Okay. So did you speak to the attorney, then, to make the  
2 arrangements to meet with Mr. Randolph?

3 A. Yeah. The attorney and Mr. Randolph were already at our  
4 building at 4 o'clock when I started. And I don't know if it's  
5 a situation where the day shift just didn't get to it, but  
6 they're there, it's 4 o'clock, I start. Talk to this guy. And  
7 that's all -- it happened that fast.

8 Q. And tell the jury what you mean by Mr. Randolph and his  
9 attorney were already at your building. Mr. Randolph was in  
10 custody at the jail, right?

11 A. Yeah. Mr. Randolph was in custody. I don't recall what he  
12 was in custody for, but he had wanted to provide information.  
13 He came forward to us. He had information regarding a homicide.  
14 His attorney was present, and this is a deal that was brokered  
15 with his Attorney. We oftentimes have people that want to talk  
16 to us. And we don't -- Miranda and the Constitutional rights is  
17 a good example. When they're represented by attorneys, we in  
18 this case go through their attorney who says hey, I want to  
19 bring him forward. I want to be present during the interview.  
20 And that's exactly what happened.

21 Q. Okay. And you met with Mr. Randolph for more than 7 hours,  
22 isn't that right?

23 A. Yes.

24 Q. And you met with him from 4:30 to almost midnight on  
25 March 21st?

1 A. Yes. Yes.

2 Q. And Mr. Joseph Caton was a Public Defender, right?

3 A. He's an attorney -- yes. Public Defender Attorney, yes.

4 Q. And do you recall Mr. Caton leaving your interview with  
5 Mr. Randolph?

6 A. Yes.

7 Q. And he left after a couple hours, right? About 6:30?

8 A. Yes. After two hours his attorney felt comfortable leaving  
9 his client with me. He didn't want to stay any longer, and he  
10 left for the day. And then I continued without his attorney  
11 present. And it was agreed upon by both parties.

12 Q. And was there anything in writing about that agreement, to  
13 your knowledge?

14 A. No. He just said he wasn't staying long. Staying anymore.  
15 And oftentimes when the clients aren't involved in the case, and  
16 they're just providing information, and they've had long days,  
17 they sit there --

18 Q. I think you're getting into speculation now about general  
19 other experiences you've had.

20 A. It's practiced -- I mean, practiced attorneys just leave.  
21 Here's my client. I spent two hours. I'm going to leave for  
22 the day.

23 Q. Okay. And attorneys -- that happens all the time that  
24 attorneys don't stay with their clients while they're speaking  
25 to the Police?

1 A. Correct.

2 Q. I'd like to have some names.

3 A. Mr. Caton.

4 Q. Okay. Anyone else that you know of?

5 A. It actually happens a lot, because their clients aren't  
6 admitting that they had any involvement. They're just providing  
7 information.

8 Q. And during this 7 hours that you met with Mr. Randolph, you  
9 went out of the room a number of times, right?

10 A. Yes.

11 Q. And you're saying that you were alone in the room, then,  
12 after Mr. Caton left with Mr. Randolph?

13 A. Yes.

14 Q. And we've heard testimony that usually homicide Detectives  
15 meet with people in pairs?

16 A. That's not always the case.

17 Q. Okay. Is that something that's individual to the Detective?

18 A. No. Some of it has to do with staffing. Other times  
19 it's -- in this case it's a witness, it's not a suspect. So the  
20 degree of danger isn't there. I've talked to homicide suspects  
21 that have killed people alone.

22 Q. And Mr. Caton told you that Mr. Randolph had some  
23 information about William Avery and the Maryetta Griffin murder,  
24 right?

25 A. Yes.

1 Q. And that was before you started the interview at 4:30,  
2 correct?

3 A. Yes. I start at 4:00, and the interview started at 4:30.

4 Q. Okay. And you've already told us that you went in and out  
5 of the room numerous times, and the reason why you went in and  
6 out of the room was to go back and review the Griffin file?

7 A. Yes.

8 Q. And before 4 o'clock you hadn't looked at the Griffin file  
9 at all?

10 A. Right. Yes.

11 Q. But at 4 o'clock when you got this information, you went and  
12 read the Griffin file. Is that accurate?

13 A. The Griffin file is -- I mean, our homicide files are  
14 sometimes thousands of pages. I could not have read the file  
15 from 4 o'clock until 4:30. I mean, you're just getting to work  
16 and setting up. No, I did not read the file.

17 Q. Okay. You -- and maybe you're quibbling with me about  
18 reviewing versus reading. I mean, you went in and out of the  
19 room to look at documents within the Griffin file. Is that fair  
20 to say?

21 A. Yeah. Throughout the 7 hours I read the file -- or I  
22 familiarized myself enough that if they had follow-up questions,  
23 I was able to answer them.

24 Q. And where did you have to go to get the Griffin file? Where  
25 was it located?

1 A. Our offices are on the fourth floor of the Police  
2 Administration Building, which is here on 7th and State. It's  
3 about 10 blocks away. Our offices and our conference rooms  
4 are -- between here and the door is where Mr. Randolph would  
5 have been, in a separate room. But the distance is relatively  
6 close.

7 Q. This was a homicide from 1998 that had remained unsolved,  
8 right? Was there any particular place where those files were,  
9 as opposed to active files?

10 A. No. We have our files numerical, and each one is given a  
11 number moving forward. And the file had a number, and all the  
12 files just continued in sequential order. So once I find a  
13 name, I find a number. And I just go into a big area and just  
14 pull the file. And again, it's all as close -- the files, the  
15 conference room, and the interview rooms are as close as from  
16 here to the door, basically.

17 Q. Let me ask you this. Do you read the Milwaukee Journal  
18 Sentinel?

19 A. Now it's JS online. But back then it was the real papers.  
20 Yes, I do.

21 Q. No paper anymore?

22 A. Yeah. I'm a Wednesday, Sunday, subscriber.

23 Q. Okay. Back in '98 did you read the Milwaukee Journal  
24 Sentinel, as it was called?

25 A. Yes.



1 Q. Do you remember seeing in 1998 a headline, man admits  
2 killing, about the Maryetta Griffin murder?

3 A. Not that I recall. I know there are some regarding this  
4 case -- there were some newspaper clippings in a file, but I  
5 don't recall. I mean, if I read the paper last Sunday, I  
6 couldn't recall many articles.

7 Q. So you didn't know anything about the Maryetta Griffin  
8 murder before you went and retrieved the file on March 21st,  
9 2001?

10 A. No.

11 Q. And had heard nothing about it being unsolved?

12 A. No.

13 Q. Had heard nothing about Mr. William Avery being -- admitting  
14 to the killing, but not being charged?

15 A. No. Since '98 to 2001 we probably had 300 homicides, so --  
16 it could be 400. I did not know anything about that one.

17 Q. But you had a pretty good clearance rate on those homicides,  
18 didn't you?

19 A. Yes.

20 Q. Do you know what -- and tell the jury what a clearance rate  
21 is.

22 A. Clearance rate is when somebody gets arrested for a  
23 homicide. It's considered cleared.

24 Q. And back when you joined the Homicide Department, what would  
25 you say the clearance rates were, if you know?

1 A. I would say in the upper 80 percent.

2 Q. And did that ever change, to your knowledge?

3 A. It was into the 90's.

4 Q. And what about back in 1998? Do you know if the clearance  
5 rate was in the 80's back then?

6 A. I would estimate it was.

7 Q. And when you met with Mr. Randolph, you knew he'd been  
8 around the block many times in investigations himself, right?

9 A. Yes.

10 Q. And Mr. Randolph and you discussed William Avery's  
11 involvement in the murder of Maryetta Griffin, right?

12 A. Yes.

13 Q. And Mr. Randolph told you that there was an individual by  
14 the name of Little "C" that had information about the murder?

15 A. Yes.

16 Q. And Mr. Randolph actually didn't discuss William Avery's  
17 involvement, other than Mr. Randolph telling you that William  
18 Avery had made statements to you while they were both in prison  
19 about the Maryetta Griffin homicide?

20 MR. SMOKOWICZ: Object to the form of the question.  
21 Statements to this Captain? You said statements to you.

22 THE COURT: Question should be rephrased.

23 MS. HOFT:

24 Q. What Mr. Randolph was telling you is that he had a  
25 conversation with William Avery while they were both in prison

1 where William made similar statements to what you saw in the  
2 Griffin file with regard to what the Officers Hernandez and  
3 Phillips said that William said back in 1998. Is that fair to  
4 say?

5 A. Yes.

6 Q. And Randolph also said that there was an individual by the  
7 name of Little "C" who had information about the murder?

8 A. Yeah. Little "C" would have gotten rid of the body.

9 Q. Okay. But you never could -- you never could locate anybody  
10 named Little "C", right?

11 A. Correct.

12 Q. And Mr. Randolph told you that his ex-girlfriend had  
13 information about the identity of Little "C", but when you went  
14 to speak to her, she denied having any knowledge?

15 A. Correct.

16 Q. And you knew that Mr. Randolph was coming forward seeking  
17 cooperation or assistance to reduce his sentence, right?

18 A. I don't know if he was -- he didn't express that to me, but  
19 clearly his attorney had brokered the deal to bring him in  
20 because he had information, and that's something that he would  
21 have worked with his attorney. I'm a Detective. That just is a  
22 fact gatherer. I interviewed him, but we made no -- we did not  
23 talk about any considerations. As a matter of fact, it was the  
24 opposite. That there are -- you know, we don't -- we tell  
25 people up front, I'm a Detective and I don't have that ability

1 to get any considerations.

2 Q. But the fact that he had a Public Defender, and the Public  
3 Defender Attorney was bringing Mr. Randolph in to see you, that  
4 led you to believe that his attorney was bringing him in for a  
5 reason, right?

6 A. Yes.

7 Q. And it's fair to say that oftentimes when attorneys get  
8 involved, they're trying to seek some type of help for their  
9 clients, right?

10 A. Yes.

11 Q. And you knew that at the time you were talking to  
12 Mr. Randolph, right?

13 A. That -- the attorney at one point would have -- would ask  
14 for something in exchange for his testimony.

15 Q. And you figured that's why Public Defender Attorney Caton  
16 brought Mr. Randolph in to talk to you?

17 A. Yeah. But oftentimes they bring people in and it just  
18 doesn't work out. So I still have to find out what Mr. Randolph  
19 has to say. If it's credible and if it's going to help the  
20 case.

21 Q. And it took you 7 hours to find out what Mr. Randolph had to  
22 say, right? That first time?

23 A. No. We had to find out who Little "C" is. I mean, it's not  
24 what he had to say. It's -- you -- what is it? And then you  
25 said Little "C" helped take the body away. Now it's the whole

1 thing of how can I corroborate this? How can I identify Little  
2 "C"? What bit of information can I work on to find the  
3 girlfriend? To find a gentleman by the name of Spencer  
4 Caldwell. To find Little "C". So it's not what information.  
5 It's you're giving me information, but now I've got to run with  
6 this and get follow-up and find out, you know, what I can do to  
7 move the case along.

8 Q. But during that 7 hours, you didn't make any phone calls to  
9 find out who Little "C" was. You didn't call the girlfriend.  
10 You didn't look at anything about Spencer Caldwell, right?  
11 During that 7 hours?

12 A. Spencer Caldwell, yes. Gentleman was later found out to be  
13 with the last name Bentley. But I didn't know who Spencer  
14 Caldwell was. And right now my main focus was to deal with the  
15 person that I had in the room, and follow up later would be to  
16 talk to the girlfriend, so forth.

17 Q. And that happened within that 7 hours on March 21st, 2001?

18 A. Just dealing with Mr. Randolph. Not working with the  
19 girlfriend or Spencer Caldwell.

20 Q. And that wasn't the only time that you met with  
21 Mr. Randolph, correct?

22 A. Correct.

23 Q. And how many times did you meet with Mr. Randolph before he  
24 testified at William Avery's homicide trial?

25 A. The total -- I probably had 3 or 4 interactions with

1 Mr. Randolph.

2 Q. And during those 3 or 4 times you met with Mr. Randolph  
3 after March of 2001, did you spend again several hours with him?

4 A. No.

5 Q. Did you go over what Mr. Randolph would testify about?

6 A. Yes.

7 Q. And you did this each time you met with Mr. Randolph,  
8 correct?

9 A. No. I went up to -- I believe it's Red Granite, to a  
10 prison, and talked to him there. And then you have to realize  
11 this happened in 2001, and the trial didn't go until 2004. So  
12 it's several years. I believe I had one prison visit which  
13 wouldn't have lasted very long. And again, it's just touching  
14 base. And then just before the trial was to start, that I  
15 talked to him then.

16 Q. But what you were touching base about was Mr. Randolph's  
17 testimony. Or expected testimony at Mr. Williams Avery's  
18 homicide trial?

19 A. Yes.

20 Q. And in August of 2002, you went to see a man by the name of  
21 Antron Kent, who was incarcerated in Oklahoma, correct?

22 A. Yes.

23 Q. And you spent about 3 hours with him, right?

24 A. Yes.

25 Q. And as you understood it, Mr. Kent had called the Milwaukee

1 Police Department back in April or May of 2002, right?

2 A. No. It was July 24th of 2002.

3 Q. Right. So it was your understanding that Mr. Kent called  
4 the Police Station in July of 2002. And he told someone about a  
5 conversation he supposedly had with Mr. Avery while they were in  
6 prison in April or May of 2002, is that correct?

7 A. Yes.

8 Q. And you don't recall asking Kent why he was calling the  
9 Department in July about a conversation he had with Mr. Avery  
10 back in April or May?

11 A. He had problems. He had to deal with the fact that he had  
12 information. He wanted to verify the information. And it's  
13 something that was bothering him.

14 Q. But that was my question, Mr. Heier. My question was you  
15 don't recall asking Kent why he didn't call the Department  
16 between April or May, when the conversation happened, and July,  
17 when he actually did?

18 A. No, I don't think I asked that exact question. He just said  
19 it's something that's been building and bothering him.

20 Q. And again, before you went to meet with Mr. Kent, you read  
21 the entire Griffin homicide file?

22 A. Yes.

23 Q. And it was your understanding, wasn't it, that Mr. Kent was  
24 under a lengthy sentence for a very brutal crime of throwing  
25 acid in his girlfriend's face?

1 A. Yes, that's correct. It was bad.

2 Q. And Kent said his current girlfriend had information about  
3 his claimed conversation with Mr. Avery, but she couldn't  
4 provide that corroboration, right?

5 A. No, the girlfriend didn't have any information. We  
6 interviewed the girlfriend to determine if she had information,  
7 but ultimately the interaction between Mr. Avery and Mr. Kent  
8 would have happened inside the prison. It would be that -- what  
9 did Mr. Kent tell the girlfriend? Is that something that she  
10 had additional information? So we never had information that  
11 the girlfriend had anything.

12 Q. Right. But Mr. Kent told you that the girlfriend knew, and  
13 then you talked to the girlfriend and she couldn't confirm that,  
14 right?

15 A. No, I don't -- I don't recall the girlfriend having any --  
16 well, I know the girlfriend didn't have any information, but I  
17 don't know what the girlfriend -- what would the girlfriend  
18 know? It would be secondhand information.

19 Q. You went to see her, right?

20 A. Yes.

21 Q. And Mr. Kent told you to go see her, right?

22 A. Yeah. Just to -- because as Detectives we have to ask and  
23 investigate. And is there anything more that we don't know?  
24 And that's why we ask other people.

25 Q. And how many times did you speak to Antron Kent before



1 Mr. Avery's homicide trial?

2 A. We went to -- obviously I went to Oklahoma in 2002. I also  
3 went up to Green Bay in September of 2004.

4 Q. That's it? Just two meetings?

5 A. And probably before the trial I would have touched base with  
6 him.

7 Q. You actually met with Mr. Kent three times, but only wrote  
8 two reports, is that accurate?

9 A. Yes. I just said I probably touched base with him before  
10 testimony. So two formal interviews. One in Oklahoma, one in  
11 Green Bay.

12 Q. And then when you touched base with him, it was to go over  
13 what he would testify about at William Avery's homicide trial?

14 A. Yes.

15 Q. And that was true for each of the three times that you met  
16 with Mr. Kent?

17 A. Yes.

18 Q. And let me draw your attention now to an individual by the  
19 name of Jeffrey Kimbrough. Do you recall speaking to Jeffrey  
20 Kimbrough?

21 A. Yes.

22 Q. And where did you speak to Jeffrey Kimbrough?

23 A. Jeffrey Kimbrough was also in Oklahoma in 2002. On  
24 August 26th of 2002, the first day we got to Oklahoma, we talked  
25 to Mr. Kent, we took his information, and the following day we

1 went back to the prison and talked to the second individual in  
2 custody, Jeffrey Kimbrough. And that was the 27th of August.

3 Q. And you spoke to Mr. Kimbrough, because the second time that  
4 Mr. Kent reached out to the Milwaukee Police Department, he told  
5 you oh, and by the way, Jeffrey Kimbrough overheard this  
6 conversation in April or May of 2002 that he had with William  
7 Avery?

8 A. Yes.

9 Q. And Mr. Kimbrough's also serving a lengthy 40 year sentence,  
10 right?

11 A. Yes.

12 Q. And Mr. Kimbrough is also looking for help on his sentence?

13 A. No. Nor was Mr. Kent.

14 Q. You have no recollection of Mr. Kimbrough wanting help on  
15 his sentence?

16 A. No. Neither of them asked for any help. Mr. Kent later on,  
17 after the fact. But neither, in any of the interactions, did  
18 they ask for any considerations. Any help on their cases or  
19 anything.

20 Q. And I think, as you said before, you knew that when an  
21 attorney brings a client in, or when a client comes in to talk  
22 to the Police who's incarcerated, that you -- that would lead  
23 you to believe that they're looking for help, right?

24 A. Yeah, the attorney would negotiate with the District  
25 Attorney or other attorneys to say hey, my client is coming

1 forward. Later on this is, you know, what can you do for me?  
2 In this case Mr. Kent and Mr. Kimbrough had already been  
3 sentenced. They weren't represented by an attorney. They  
4 weren't going through anybody. They made a cold call to the  
5 Homicide Division. Mr. Kent did, and said I have information on  
6 a homicide. And they're already -- it's -- convicted. They're  
7 done. So we don't have to work with an attorney. We just went  
8 to the jail and talked to them.

9 Q. But you understand that in a resentencing it's a factor to  
10 -- for a Court to consider on resentencing an individual's  
11 cooperation with law enforcement. You're aware of that, right?

12 A. Yeah. In the 9 years or 10 years I've been in the Detective  
13 Bureau, I was at one resentencing where somebody got -- they  
14 didn't get any consideration at the time. They were -- and that  
15 was Mr. Kent. He asked for some type of reconsideration, and  
16 the Judge denied it at the time. And that's one in 10 years.

17 Q. And had you ever appeared at any sentencing hearing for  
18 anyone else who cooperated with you, other than Mr. Kent?

19 A. No.

20 Q. And did you ever appear in court -- well, let me strike  
21 that. You met with Mr. Kimbrough how many times before his  
22 testimony?

23 A. The only thing I can recall is Oklahoma. And then it would  
24 have been during the Court proceedings before testimony.

25 Q. So you don't recall meeting with Mr. Kimbrough four times

1 and only writing one report?

2 A. The only report I wrote was the Oklahoma, and the only other  
3 time would have been probably just before court. I don't recall  
4 the other -- I don't recall Mr. Kimbrough going to a prison or  
5 anything like that. But you're correct on the one report.

6 Q. Okay. But you're saying I'm not accurate about the three  
7 other times without a report that you met with him?

8 A. No. The only thing I can recall -- I mean, I may have -- I  
9 can only recall offhand the two times. If there was a third,  
10 it's very possible.

11 Q. Do you recall testifying that you met with Mr. Kimbrough on  
12 4 occasions?

13 A. If I testified at the time -- I would have testified in 2004  
14 when the trial was. My memory would have been accurate at the  
15 time. If I testified to 4, it would have been 4.

16 Q. And is it fair to say that in 2004, then, in September of  
17 that year, the Maryetta Griffin case came back into focus  
18 because the Milwaukee Police Department knew that Mr. Avery was  
19 being released from jail?

20 A. No. We -- it was on our radar in 1998, and then it came  
21 back in 2001. There was no movement on it. 2002 we had a  
22 couple guys in Oklahoma, and then it pretty much died from there  
23 in 2002. I was aware that Mr. Avery was going to be released.  
24 He told me in 2003 he would be back in Wisconsin, but pretty  
25 much it kind of died.

1 Q. You mean the prosecution of William Avery kind of died  
2 during those years?

3 A. The whole investigation. I don't believe there was anybody  
4 else who came forward after that.

5 Q. And in September -- September 7th of 2004, you spoke to  
6 Mr. Kent to see if he was still on board?

7 A. Yes.

8 Q. And you then on that same day, September 7th, 2004, signed a  
9 Criminal Complaint against William Avery for reckless homicide,  
10 right?

11 A. Yes.

12 Q. And Mr. Avery was arrested at his Probation Agent's office?

13 A. Yes.

14 Q. And in 2005, during Mr. Avery's homicide trial, you were the  
15 lead Detective, right?

16 A. Yes.

17 Q. And that meant that you were in court each day?

18 A. Yes.

19 Q. And with regard to these 3 jailhouse informants that you  
20 worked with, you didn't use any other techniques to determine if  
21 they were telling the truth. You just gathered the info they  
22 had, right?

23 A. No. We -- at the prison Mr. Kent and Mr. Kimbrough  
24 indicated that they were -- had access to Mr. Avery. We showed  
25 them photographs. Can you identify out of 6 photographs who is

1 Mr. Avery? So it's more of a verification process. Checked  
2 with the guards. Could they have logistically been in the place  
3 that they claimed to be in to hear these conversations? And it  
4 was verified. Other things -- some of the details that they  
5 provided, it was consistent with where the case was.

6 Q. But you didn't use any interrogation techniques to sort out  
7 or test whether Mr. Kent and Mr. Kimbrough were telling the  
8 truth, other than gathering the information. Do you remember  
9 testifying about that?

10 MR. SMOKOWICZ: Objection, Your Honor. This has been  
11 answered already.

12 THE COURT: Well, it's a follow-up. He may answer, if  
13 he can.

14 THE WITNESS: Did I use interrogation techniques? No.  
15 These were voluntarily people coming forward.

16 MS. HOFT:

17 Q. And you would agree with me that one of the concerns of  
18 jailhouse informants is that they may be manufacturing or  
19 concocting a story in order to get leniency in their own case?

20 A. I'm sorry? Could you repeat that?

21 Q. Would you agree with me that one of the concerns of  
22 jailhouse informants is that they may be manufacturing or  
23 concocting a story in order to get leniency in their own case?

24 A. Yes. However, the leniency was discussed. That there are  
25 no threats or promises. So when I talked to them, there was

1 nothing to indicate that they were getting any leniency at all.

2 Q. And jailhouse informants have a high motivation to lie.

3 Would you agree with me on that?

4 A. No, I don't know about the high. I don't know -- I get a  
5 lot of people that come forward because they're in jail and  
6 people are talking to them. I don't see the motivation to lie,  
7 no.

8 Q. Let me ask you this. Jailhouse informants with 30-plus  
9 years on a sentence have a high motivation to potentially tell  
10 untruths. Would you agree with me on that?

11 A. No, because a lot of times people -- they've done their  
12 time. People change so much. I've been to so many prisons.  
13 They change. They redirected their life. They found God. They  
14 want to do the right thing. There's a lot of that going on, and  
15 they realize they're locked up forever. And people tell them  
16 stuff, and they -- it's almost like a rebirth. They want to  
17 help people, because in some cases there are victims, and they  
18 made mistakes. And that's why they become preachers in prison.  
19 So the motivation to lie? I don't see a lot of that happening.

20 Q. And if I understand you correctly, you're saying that in  
21 30 -- a 30-plus year sentence is basically the rest of your  
22 life?

23 A. Yeah, I'd say 30 years is pretty much your -- it could be  
24 the rest of your life.

25 Q. And you wouldn't agree with me that a concern with a

1 jailhouse informant who is under a 30-plus year sentence --  
2 there being a high motivation to potentially tell untruths in  
3 order to get reductions that are beneficial to their own cases.  
4 You would not agree with me?

5 A. I testified I went to one re-characterization of a sentence.  
6 Mr. Kent. I have never seen anybody that got 30 years, or a  
7 homicide, or anything else, get any consideration. I've never  
8 seen it. Clearly in 2005 I didn't. In 2009. In 2015. I've  
9 never seen anybody successfully get anything knocked off a 38 to  
10 40 year sentence. I've never seen it.

11 Q. So you don't think there's a concern, and you would not  
12 agree and wouldn't have agreed in your deposition that a  
13 jailhouse informant under a 30 year plus sentence has a high  
14 motivation to tell untruths?

15 A. I think that -- but that's why we have the checks and  
16 balances. I don't know about --

17 Q. Is that a concern, Mr. Heier?

18 A. I think the word you're using is a high motivation. I see  
19 that there's a motivation. And that's why we check and balance  
20 and try to do as much as we can. Part of the process is  
21 testifying in court. I mean, they raise their hand and they  
22 swear to tell the truth just like everybody does. I mean,  
23 there's processes that go through this. They have to actually  
24 show up, see the accuser, if they're lying. Those are processes  
25 that happen.



1 Q. Do you recall agreeing that it is a concern that jailhouse  
2 informants -- and I'm at page 93 of the deposition.

3 MR. SMOKOWICZ: Well, if we're going to do this, let's  
4 do it by question and answer here. What line?

5 THE WITNESS: The question I'm hung up on is the word  
6 high. I mean, do they have motivation? I testified yes, they  
7 have a motivation. Have a high motivation?

8 MS. HOFT:

9 Q. Were you hung up on that word high at your deposition?

10 A. Yes. No, I'm just saying, if that's -- the word high. I'm  
11 sitting here today saying a high motivation? Yes.

12 Q. And you're saying back when you gave your deposition you  
13 might not have had a quibble with the word high?

14 A. You can read the deposition. And if I said it then, that's  
15 fine.

16 Q. Thank you. I will read the deposition. Certainly a concern  
17 that you always have as a jailhouse informant --

18 MR. SMOKOWICZ: Just a second. I'm sorry. I object.  
19 That's not proper cross examination. The question and answer  
20 should be read. And I don't know where you're reading from.

21 THE COURT: Page 93. What's the line?

22 MS. HOFT: It's line 19 through 24.

23 MR. SMOKOWICZ: Well, the question begins at line 18,  
24 and the answer goes on to the next page. And I'd ask that the  
25 entire answer be read.

1 MS. HOFT: Your Honor, this is a statement of a party.

2 THE COURT: Well, let's read the deposition here. And  
3 for purposes of completeness the full answer should be given, if  
4 it's one answer to one question. Or two questions.

5 MS. HOFT:

6 Q. Mr. Heier, you've repeatedly told us I believe about  
7 testifying at Mr. Kent's resentencing hearing. And that was the  
8 only time you ever did anything like that, right?

9 A. Yes. And I testified under subpoena. I mean, I was  
10 subpoenaed to be there.

11 Q. And that was at Mr. Kent's request, right?

12 A. Yes.

13 Q. And you testified at Mr. Kent's resentencing hearing that he  
14 gave helpful testimony in William Avery's trial and cooperated  
15 with law enforcement, right?

16 A. Yes.

17 Q. And after you testified, there was no change in Mr. Kent's  
18 sentence, but later there was a subsequent sentencing hearing  
19 where Mr. Kent received a year reduction, correct?

20 A. Yes, at the --

21 Q. That's the only question I have for you. And that's the  
22 last question I have for you. Thank you.

23 THE COURT: Mr. Smokowicz.

24 MR. SMOKOWICZ: Thank you, Your Honor. I have a few  
25 questions.

**CROSS EXAMINATION**

**BY MR. SMOKOWICZ:**

Q. Your Honor, I want to start off with the completion of that prior testimony that we had the issue about. Actually I'm going to pass on that for the moment. Can't read my own handwriting today. Captain Heier, you mentioned earlier that with respect to Keith Randolph and his attorney, that the attorney would have asked for something. Would that attorney, Mr. Caton, have asked you for something?

A. No.

Q. Who would he have asked for something, if anybody, before he allowed his client to meet with you?

A. That would be the charging District Attorney, Mark Williams, in this case.

Q. And do you -- before you met with Keith Randolph that day, and his attorney, were you aware of any terms or any discussion that they had?

A. Absolutely nothing.

Q. Did that influence you in any way in what you did that day in terms of your questioning of Mr. Randolph?

A. No.

Q. In fact, before you walked into that room that day were you -- other than being told that this individual had some information with respect to a homicide, did you even know which homicide?

1 A. No.

2 Q. And prior to that day had you worked on -- worked on the  
3 Maryetta Griffin homicide, if you know?

4 A. I know for a fact I did not. I looked for any reports that  
5 I may have written. Any witnesses. I was not involved in the  
6 case whatsoever.

7 Q. And can you describe for the jury, how were you able to look  
8 for anything that you do in terms of that homicide file?

9 A. We have a -- we have basically a book that's got victim's  
10 names, address names, and file numbers assigned to it. I would  
11 look at the year they said it occurred, the area it occurred,  
12 and just find something that references that. And again, it  
13 references to a number. And I just go into a room and find the  
14 file with that number on it, and then it's just a matter of all  
15 the reports are there. All the photographs, all the witness  
16 interviews, any suspect interviews, everything is contained in  
17 this file.

18 Q. And with respect --

19 THE COURT: Excuse me. Let me ask the witness. Is  
20 that -- for my purposes, is that the M-1 file? Is that --

21 THE WITNESS: Yeah. It's an M-file. The "M", murder.  
22 They started it with murder one, so it's M-1 and it goes  
23 forward. So I don't know what we're up to now. 6,000. So it's  
24 M-6002 is probably what we're at now. And that just goes back  
25 to when they started assigning files. And you will see numbers

1 written on pages and documents that refer to this. So all the  
2 reports go into the M-file.

3 MR. SMOKOWICZ:

4 Q. So I know that you were not the author of this report, but  
5 if we look at this report -- for example, at the top right hand  
6 corner, there's an M-number there for this case?

7 A. Yeah. This is a 1998 case, so it's M-3431. Again, it's the  
8 3,400th homicide since they started this numerical system.

9 Q. Do you know how far back that extends?

10 A. No, I don't know, but I know we've got M-1. We've got that  
11 original file.

12 Q. And what number, to your understanding -- I know you've been  
13 out of the homicide unit for awhile, but what number are we at  
14 at this point?

15 A. We're in the -- probably five or 6,000 now.

16 Q. And is that consecutive from year-to-year?

17 A. Yes.

18 Q. So this is not the 3,431st homicide, thank goodness, in  
19 1998. This is since whenever number one was assigned?

20 A. Yes.

21 Q. Now, you were asked earlier by Miss Hoft about you meeting  
22 with Mr. Kent in September 2004, and she asked you whether or  
23 not you met with him in order to determine whether he was,  
24 quote, still on board, close quote. Could you explain why you  
25 met with Mr. Kent at that time?

1 A. Yeah. Well, I talked to him the first time, again, in  
2 Oklahoma in 2002. He provided a statement, and I subsequently  
3 interviewed Mr. Kimbrough at the facility. Now, this is 2002.  
4 We haven't done -- I personally haven't done anything for a  
5 couple years. And a lot of times we need to touch base with  
6 them to say hey, we remember you, you didn't waste your time  
7 talking to Police, and then we just throw you away and just  
8 forget about you. We just try to at least touch base with  
9 people. And in this case, on September 7th of 2004, 2 years  
10 later, the District Attorney was prepared to issue the charge  
11 against Mr. Avery. Mr. Kent would be one of the witnesses. And  
12 here I am, two years later. And I know you talked to me back in  
13 2002, but again, is this still accurate information? Do you  
14 still remember? And are you willing to go through? Because  
15 once we issue the charges, at some point you're going to have to  
16 testify. And that's something we put in the statement. Are you  
17 willing to testify? Is it a true statement? Are you willing to  
18 testify?

19 So two years later, are you still -- when I said the  
20 word on board, are you still willing to testify and cooperate?  
21 Because if he wasn't, or he says no, then I would have to bring  
22 that to the District Attorney, because at some point he may be  
23 called to testify. And clearly this happens now in 2005. So  
24 now we are 3 years after my initial contact that he actually had  
25 to testify.

1 Q. In your experience is there a reason why someone that you've  
2 spoken to and who's provided information in prison would  
3 subsequently not be willing to go forward with providing  
4 testimony?

5 A. Yeah. Well, they're called snitches. I mean, they're in a  
6 prison system. They get threatened. They see a lot. And when  
7 you go back into a prison, you're labeled. Because people see  
8 this stuff. We have computers that inmates can just find out  
9 information, share information. When you testify against  
10 another inmate, the person -- you're not looked at favorably.  
11 And things may have changed in their personal lives, and their  
12 experience, and sometimes people say no, I don't want to do  
13 this. I changed my mind. But it's still something I have to  
14 tell the D.A. before we move forward. Before we issue the  
15 charges. Is he willing to testify? Is this still true? Is  
16 there anything else you want to add? And that's the reason for  
17 that meeting on the 7th of September.

18 Q. In your testimony earlier you were asked about being in  
19 Court each day and being the lead Detective. Could you explain  
20 to the jury why you would have been in court and been what was  
21 called for that trial the lead Detective?

22 A. Couple different reasons. I was on the Homicide Unit in  
23 2000 but clearly I've grown and matured in 2005. I was the  
24 person that had the last interactions with people. My 3  
25 witnesses ultimately are a key to moving this case forward,

1 because somebody was charged. I'm also second shift, so I'm  
2 able to -- so you don't take away a day shift Officer to sit in  
3 trial every single day. Being second shift, they're not losing  
4 a person on the streets. So I would sit with the District  
5 Attorney similar to at the table there. I would be the  
6 co-person able to pull reports, able to get photos, anything  
7 that the District Attorney -- it's like a helper to the District  
8 Attorney. And it had to do with my maturing in the Unit. The  
9 fact that I was second shift, and the fact that I had such a  
10 familiarity later on in the movement of this case.

11 Q. Is your role as lead Detective -- or I'm sorry. As the  
12 Detective assisting the District Attorney, is that in any way  
13 connected to why you would be meeting with Antron Kent, or Keith  
14 Randolph, or Jeffrey Kimbrough during the course of that trial?

15 A. Yeah. That's part of the duties, is you meet with the  
16 witnesses. With the D.A., oftentimes. And also explain the  
17 process. Because, you know, people don't know how this works.  
18 You're going to be called. You're going to sit in this, you  
19 know, chair. There's going to be a microphone. They're going  
20 to ask you questions. And just -- it's more of -- it's also the  
21 comfort level, because it's -- from the sterile setting of being  
22 in a prison, to now you're going through hallways, and locked  
23 up, and being carted off to various different cells. Very  
24 unfamiliar. And it's just a reassuring, this is what's going to  
25 happen, and this is how it goes.



1 Q. Earlier you testified about showing a photo array to at  
2 least Antron Kent. Did you also show one to Jeffrey Kimbrough  
3 when you met with him in Oklahoma?

4 A. Yes.

5 Q. Can you explain what a photo array is for the jury?

6 A. Certainly. A photo array is 6 individuals that look  
7 similar. When somebody says hey -- in this case Mr. Avery --  
8 hey, he provided information. Okay. Now I want to -- part of  
9 the checks and balances. I want to verify is the person that we  
10 have as Mr. Avery, can you pick him out? You know, not that  
11 they're giving me a lot of information, and then when I show a  
12 picture of them, they go no, I don't know who that is. You  
13 know? And then it's more of a credibility thing.

14 So it's 6 individual photos, and showing the  
15 photographs. And it's, again, kind of like a test. Who is the  
16 person that you're providing information? Who's the person that  
17 told you this information? Where is he in this picture? And  
18 can you identify him? And in the case of Mr. Kent and  
19 Mr. Kimbrough, they both were able to.

20 Q. They were both able to do what?

21 A. They were able to pick out Mr. Avery from the 6 random  
22 photos of people of similar skin color, height, age, weight.

23 Q. Last but not least, with the Court's permission I'm going to  
24 read in that portion of the deposition transcript for  
25 completeness. And I will read the whole question and the whole

1 answer as one. Question: Okay --

2 THE COURT: Is this Page 139?

3 MR. SMOKOWICZ: Page 139, line 2.

4 MS. HOFT: Objection, Your Honor. Foundation. Page.  
5 And is this impeachment? Is this admissible on some level?

6 THE COURT: Is this the ruling that the Court made  
7 that you can read it at this time?

8 MR. SMOKOWICZ: What this was, Your Honor, was the  
9 Court indicated that you did not want to have the rest of that  
10 answer given at that time, but for smoothness in the  
11 presentation I'd be allowed to do it now.

12 THE COURT: Right. Right. Okay.

13 MS. HOFT: And -- I'm sorry. I would just ask for the  
14 page.

15 MR. SMOKOWICZ: It's Page 139, beginning at line 2,  
16 ending at line 14. Question: Okay. How about when you were  
17 there? Did you have any awareness of a group of unsolved female  
18 homicides, particularly in the north Milwaukee area? Would that  
19 be a concern of the Detective Department? Answer: Well,  
20 obviously this was 1998, and I believe there was some before I  
21 came there. I mean, if I came in 2000, this was a couple years  
22 earlier when prostitutes were found. But nothing that -- we  
23 didn't have any serial killers that killed more than 2 or 3, you  
24 know. One instance where they killed two people. Or one  
25 incident where they killed three people. I don't recall ever

1 putting multiple cases together on anybody.

2 Thank you, Your Honor. That's all I have.

3 THE COURT: Okay. Any recross?

4 MS. HOFT: Just briefly, Your Honor.

5 **REDIRECT EXAMINATION**

6 **BY MS. HOFT:**

7 Q. Mr. Heier, one of the issues that you were explaining about  
8 testing was to give a photo array to a jailhouse informant to  
9 see if they could actually pick out the person they were in  
10 jail -- or in prison with?

11 A. Yes.

12 Q. And you also mentioned that -- and you used the word  
13 snitches in prison have access to computers?

14 A. Yes.

15 Q. So that's a concern to you? That a snitch might get  
16 information about a crime from the public domain?

17 A. No. I don't know how many computers were back in 2001, but  
18 --

19 Q. I'm just asking you. That's what you said in your answer to  
20 Mr. Smokowicz's question. So I'm just trying to understand what  
21 you just said, which is snitches have access to computers. And  
22 now you're trying to tell me that, well, not really?

23 A. No, I'm --

24 MR. SMOKOWICZ: Your Honor, I'm just going to object,  
25 if I may. I'm going to object to the form of the question as

1 misstating his prior testimony. He did not say snitches have  
2 access to computers.

3 THE COURT: Overruled. He may answer the question.

4 THE WITNESS: Okay. You asked two questions. One was  
5 that people can research things. And I think you're referring  
6 to this 1998 or 2000 incident. I don't know in 2002 what they  
7 could investigate or look up relative to a homicide. That's  
8 what you said. The other thing is as far as snitches, if you  
9 look at -- and obviously you can't do this, because there's some  
10 sequestration -- if you look up the William Avery case, it  
11 specifically says that there's a witness that testified  
12 against -- there are three witnesses that testified against  
13 William Avery. Those three people being --

14 MS. HOFT:

15 Q. I'm sorry. Are you telling us now when you Google William  
16 Avery this is what you see? Or this is what you saw back in  
17 2002? When you Googled William Avery? I'm confused.

18 A. Okay. In 2005 when the case went to trial we have  
19 witnesses. If you look at cases -- and prisoners can do this  
20 now and in 2005 -- you will see who testified on a specific  
21 case. When people like Antron Kent go back to prison, prisoners  
22 can look. Hey, you went to Milwaukee. And if information was  
23 through friends and family, Antron testified, it can be verified  
24 on computers that Antron testified on a case. Or people testify  
25 in a specific case. Or people put in things. So when you go

1 back to prisons, you're labeled a snitch because you provided  
2 information. You helped the Police. And these are things that  
3 have checks and balances and can be -- that can be verified  
4 through computers.

5 Q. I see what you're saying. So -- but is it true that in 2002  
6 someone who had access to a computer could have accessed a 1998  
7 newspaper article published in the Milwaukee Journal that said  
8 man admits to killing?

9 A. I don't know how advanced it was back then. I don't know.

10 Q. Did you have any concerns about whether Antron Kent accessed  
11 a computer and received public information about the allegations  
12 of Milwaukee Police Detectives that William Avery made  
13 statements implicating himself in Maryetta Griffin's murder?

14 A. Two parts. I don't know if you can type in 1998 William  
15 Avery and find a referencing article in the Journal Sentinel. I  
16 don't know if they scanned those and put them -- because that  
17 was an old newspaper. Moving forward we have JS Online. And I  
18 don't know the archival. So I don't know if you can even do  
19 that today, however many years after the fact. I don't know  
20 that answer.

21 Was it a concern? There were articles printed in the  
22 Journal. We had them in the file. Was it -- do we think that  
23 people are going to read this? I don't know. I mean, I've  
24 never been in a situation where somebody put together more facts  
25 out of an article. I think there's more that we look at. And

1 again, the checks-balances. This person has to go on the stand  
2 and swear that their testimony is true. Some of the facts that  
3 they were with the prisoner at one point is verified. In  
4 Mr. Kimbrough's case, the things that they say -- or I'm sorry,  
5 Mr. Randolph -- this is a close family friend that's coming  
6 forward and providing information. You know, this is somebody  
7 that was in this case a pallbearer at Mr. Avery's mother's  
8 funeral. This is somebody that's close to him, and yet he's  
9 providing information to us. Ultimately to a confidant.

10 Q. Did you have any concerns that Mr. Kent saw a newspaper  
11 article in 1998 or at any point that was headlined man admits to  
12 killing? Did you have any concerns about that?

13 A. No. It never came to my mind.

14 Q. Yeah. And you've indicated that you didn't tell anybody  
15 that you were going to testify at Mr. Kent's sentencing hearing  
16 until you received a subpoena from Mr. Kent's lawyer, right?

17 A. What do you mean, I didn't tell anybody? I mean, I  
18 testified and the D.A. testified, too. So there were more  
19 than -- it's not a secret, because the D.A. is also somebody.

20 Q. But you and the D.A. testified at the Antron Kent, the acid  
21 thrower sentencing hearing, that Antron Kent cooperated with law  
22 enforcement and testified against William Avery in his homicide  
23 trial, right?

24 A. Yes.

25 Q. And had you let anybody know beforehand -- or had you told

1 Mr. Kent hey, if you subpoena me for your sentencing hearing, I  
2 will come and I will testify that you helped us and you  
3 cooperated with us. Had you told -- had you told him that, you  
4 would have had to disclose that fact to Williams' defense  
5 attorney before his homicide trial, right?

6 A. I didn't tell him that.

7 Q. Right. But if you had, you would have had to disclose it,  
8 right?

9 A. Okay. We can get subpoenaed --

10 Q. And the reason is, you would have had to disclose --

11 MR. SMOKOWICZ: I object. She's arguing with the  
12 witness and not allowing him to answer.

13 THE COURT: Let's let him answer the question. The  
14 question is you would have to disclose that if you made that  
15 offer to him.

16 THE WITNESS: If I made the offer to him, it would be.  
17 But I didn't. I wrote down that there are no threats, promises.  
18 I write this down and tell them because I can't do anything for  
19 them. I don't have that power. If later on he gets -- he was  
20 not represented by an attorney. And if he later on gets an  
21 attorney and they subpoena me, and the D.A., and anybody else,  
22 we have to show up. We don't have those choices.

23 MS. HOFT:

24 Q. You had the power to testify on behalf of Mr. Kent at a  
25 sentencing hearing, right?

1 MR. SMOKOWICZ: I'm going to object, Your Honor.  
2 Misstates his prior testimony.

3 THE COURT: Well, I assume he voluntarily showed up  
4 and testified?

5 MR. SMOKOWICZ: But, Your Honor, he says he was  
6 subpoenaed and that's why he testified.

7 THE COURT: Right.

8 MS. HOFT:

9 Q. Well, I'm just saying you had the physical personal power to  
10 get up into the witness stand at Mr. Kent's sentencing hearing  
11 and testify on his behalf.

12 A. I like the word you use. Power. But I --

13 MS. HOFT: Nobody else did. Thank you.

14 MR. SMOKOWICZ: Your Honor, he can answer?

15 THE WITNESS: I was subpoenaed and I was asked  
16 questions, just like we're asking questions. And did he  
17 cooperate? Yes. Did he testify truthfully? Yes.

18 MS. HOFT:

19 Q. And had Williams' defense lawyer known at William's homicide  
20 trial that you were going to testify for Antron Kent, he could  
21 have used that to discredit Mr. Kent's motive for coming  
22 forward, isn't that right?

23 MR. SMOKOWICZ: Objection to the form of the question.  
24 Assuming facts not in evidence. That is about any kind of  
25 arrangements.



1 THE COURT: Well, it is a hypothetical, and the Court  
2 will advise the jury that the witness can be asked a  
3 hypothetical question. But if the evidence doesn't show that  
4 the facts supporting the hypothetical are proven, then you are  
5 to disregard the answer to the hypothetical. That's perfectly  
6 clear, isn't it? He may answer the hypothetical, though. Go  
7 ahead, counsel. I forgot the exact nature of the --

8 MS. HOFT: I'll try again, Your Honor. Thank you.  
9 Q. If your testimony at Mr. Kent's sentencing hearing had been  
10 told to William's lawyer during the homicide trial, he would  
11 have been able to use that to discredit Mr. Kent's motives for  
12 testifying?

13 A. Yes.

14 MS. HOFT: No further questions, Your Honor.

15 THE COURT: Anything else?

16 MR. SMOKOWICZ: I do have one thing, Your Honor.

17 THE COURT: Okay.

18 MR. SMOKOWICZ: Just clarification. And obviously we  
19 are intending to recall our client back in our case here, so I  
20 will confine my question to the examination this morning.

21 **RECROSS EXAMINATION**

22 **BY MR. SMOKOWICZ:**

23 Q. Captain Heier, in terms of the sequence of these things  
24 here, Antron Kent's testimony in William Avery's criminal trial  
25 and your being subpoenaed for testifying in some resentencing

1 hearing, what was the sequence there?

2 A. The sequence was he testified at Mr. Williams Avery's trial  
3 months, years -- I don't know when. I mean, there's  
4 documentation we could re-call. It was quite a ways after. And  
5 again, he wasn't --

6 Q. What was quite a ways after?

7 A. The request for consideration and resentencing. That was  
8 far afterwards. And when I was there, he was denied.

9 Q. So was there any subpoena issued to disclose?

10 A. No, I would not disclose anything. I didn't know that it  
11 was happening. I was not subpoenaed ahead of time.

12 MR. SMOKOWICZ: Thank you. That's all I have.

13 THE COURT: Anything else?

14 MS. HOFT: No, Your Honor.

15 THE COURT: All right. You may step down, Captain  
16 Heier. Thank you. Watch your step, please. Ladies and  
17 gentlemen, we're going to -- well, let's -- is the next witness  
18 going to be Mr. Kimbrough?

19 MS. HOFT: Mr. Randolph, actually.

20 THE COURT: Or Mr. Randolph. And so we'll take the  
21 morning break, in any event. And we'll take that witness when  
22 you get back, ladies and gentlemen. Again, please don't discuss  
23 the case among yourselves. Only after all the evidence is in.

24 (Whereupon the jury was excused at 10:35 a.m.)

25 THE COURT: Okay. Take a break until we get

1 Mr. Randolph.

2 MR. STAINTHORP: Mr. Randolph is here, Judge. He's  
3 not in custody.

4 THE COURT: Oh, he's not in custody? Good. Will have  
5 to take a little longer break because Mr. Kimbrough is in  
6 custody. Okay.

7 (Whereupon a recess was called by the Court. Upon  
8 conclusion of the recess, the proceedings continued as when the  
9 jury was returned to the courtroom at 11:06 a.m.:)

10 **JEFFREY KIMBROUGH**, called as a witness, having been  
11 first duly sworn, on oath testified as follows:

12 THE CLERK: And pull the microphone down. State your  
13 full name and spell your last name for the record.

14 THE WITNESS: Jeffrey Kimbrough. K-I-M-B-R-O-U-G-H.

15 **DIRECT EXAMINATION**

16 **BY MR. ELSON:**

17 Q. Good morning, Mr. Kimbrough. How old are you, sir?

18 A. 38.

19 Q. And are you presently incarcerated?

20 A. Yes.

21 Q. Where are you currently incarcerated?

22 A. Prairie du Chien.

23 Q. And that's a prison?

24 A. Yes.

25 Q. You're in prison for child abuse and reckless homicide, is

1     that right, sir?

2     A.   Yes.

3     Q.   And when were you convicted of those crimes?

4     A.   '98.   1998.

5     Q.   And what is your sentence?

6     A.   40.

7     Q.   40 years?

8     A.   40 years.   Yes, sir.

9     Q.   Now, in 2005 you testified at William Avery's criminal  
10    trial, is that right?

11    A.   Yes.

12    Q.   And you were called as a witness for the prosecution?

13    A.   Yes.

14    Q.   And you testified that you overheard William Avery have a  
15    conversation with Antron Kent, right?

16    A.   Yes, I did.

17    Q.   And that in this conversation William Avery had with Antron  
18    Kent, you said you overheard William Avery say that he choked  
19    and killed a woman and got one of his guys to help him get rid  
20    of the body, is that right?

21    A.   Yes, I said that.

22    Q.   Was that testimony true or false, sir?

23    A.   It's false, sir.

24    Q.   Did you ever overhear William Avery confess to Antron Kent  
25    that he choked and killed a woman?

1 A. No, sir.

2 Q. Prior to Mr. Avery's criminal trial, were you interviewed by  
3 Milwaukee Police Detectives?

4 A. Yes.

5 Q. And I want to ask you some questions about the initial  
6 meeting that you had with the Milwaukee Police Detectives. Tell  
7 the jury how that came about.

8 A. Talking the first time when they came down to -- down to  
9 Oklahoma?

10 Q. The first time that you ever met with a Milwaukee Police  
11 Detective in relation to William Avery.

12 A. Okay. I was working in the kitchen. I come -- I came back.  
13 Antron Kent had told me that the Police come down to talk to me.

14 Q. Where were you at this point?

15 A. I was on the unit.

16 Q. You were in prison?

17 A. Yes, I was in prison.

18 Q. What prison were you in?

19 A. Oklahoma.

20 Q. Okay. And what year was this?

21 A. Like 2002.

22 Q. Okay. And you were saying that Antron Kent told you that  
23 some Police wanted to speak with you?

24 A. Yes.

25 Q. And what happened next?

1 A. They called me down and -- to interview me. And I talked to  
2 them. They asked me a couple questions.

3 Q. How many Police Officers were there?

4 A. It was two guys.

5 Q. What were their names?

6 A. Only one I know is Tim Heier. I don't know the other one.

7 Q. Timothy Heier?

8 A. Yes.

9 Q. And where did you meet with Detective Heier and this other  
10 Detective within the prison?

11 A. It was little room off to the side by the property room.

12 Q. Okay. And describe what happened during this meeting with  
13 Detective Heier and the other Detective.

14 A. He asked me some questions about --

15 MR. SMOKOWICZ: Your Honor, since there are two people  
16 there, I'd like to know which Detective.

17 MR. ELSON:

18 Q. You said he asked you some questions. Which Detective?

19 A. That was Tim.

20 Q. Officer Heier asked you some questions?

21 A. Yes.

22 Q. What questions was he asking you?

23 A. Just asked me some general questions about my family, me.  
24 And then he went on to talk about the incident.

25 Q. What did he say to you about the incident?

1 A. He asked me -- he said yeah, I heard that you had some  
2 information about what you just told me. And I talked to him  
3 about it. And, you know, told him that -- I told him some  
4 things that wasn't true.

5 Q. Did Detective Heier during this interview provide you with  
6 any details about the incident?

7 A. He -- he told me that she was killed at some house or  
8 something.

9 Q. And prior to speaking with Detective Heier that day, did you  
10 know that she'd been killed at some house?

11 A. No.

12 Q. Did -- other than Detective Heier telling you that she'd  
13 been killed at a house, did he provide you with any other  
14 details?

15 A. Well, he said that she was -- she was thrown in a dumpster  
16 or something. And then I made that story up, you know -- about,  
17 you know, Antron. And about the rec thing.

18 Q. Can you tell the jury what you mean about the story and the  
19 rec thing?

20 A. Well, Antron Kent, he provided some information about, you  
21 know, what supposedly had happened. And I went along with it.

22 Q. How long did this interview with Detective Heier and the  
23 other Milwaukee Detective in Oklahoma last?

24 A. It was awhile. I don't know how long.

25 Q. A number of hours?

1 A. I don't know. Wasn't no clock or nothing around.

2 Q. After this initial interview concluded, did you have another  
3 meeting with Milwaukee Police Detectives after that at any  
4 point?

5 A. I remember coming to Jackson like before the first trial.  
6 It was like 2005.

7 Q. This was a different prison you were in?

8 A. Yes.

9 Q. And this was in 2005?

10 A. Yes.

11 Q. In-between the first meeting that you just told us about  
12 with Detective Heier in 2002, and this second meeting three  
13 years later in 2005, did you have any other meetings with any  
14 Milwaukee Police Detectives?

15 A. No.

16 Q. Tell me about the meeting in Jackson Correctional  
17 Institution in 2005. Which Detectives did you meet with at that  
18 time?

19 A. It was only one that came.

20 Q. And who was it?

21 A. It was Heier.

22 Q. And where did you meet with Detective Heier on this  
23 occasion?

24 A. It was a little conference room.

25 Q. And can you describe for the jury what happened during this



1 meeting?

2 A. Just went over some -- over the statement. That was just  
3 about it. Just went over the statement before court. And that  
4 was it.

5 Q. Did you at any point meet with Milwaukee Police Detectives  
6 Katherine Hein and Gilbert Hernandez?

7 A. Yes.

8 Q. When did that meeting occur? Was that meeting before this  
9 meeting you just told me about at Jackson?

10 A. No -- yes. It was -- it was in 2004?

11 Q. Okay. And you were in prison at that time?

12 A. Yes.

13 Q. Were you in a different institution at that time?

14 A. Yes.

15 Q. Where were you?

16 A. Appleton, Minnesota.

17 Q. And you were interviewed by Detectives Hein and Hernandez on  
18 this occasion?

19 A. Yes.

20 Q. And what -- tell us about that interview. What happened  
21 during that interview?

22 A. They just -- they came to talk to me. Went -- kind of went  
23 over the statement. I guess they came up for him, because I  
24 didn't know who they were.

25 Q. Came up for whom?

1 A. I want to say for Heier.

2 Q. And they went over the statement that you'd given to Heier  
3 previously?

4 A. Yes. Yes.

5 Q. And then how long did that meeting last with Detectives Hein  
6 and Hernandez?

7 A. It wasn't long. It was real short.

8 Q. Okay. And you've already told us about the next meeting,  
9 which was the meeting at Jackson Correctional Institution?

10 A. Yes. Yes.

11 Q. After the meeting at Jackson Correctional Institution, what  
12 is the next contact you had with Detective Heier, if any?

13 A. I seen him right before the jury trial.

14 Q. Okay. And tell us what happened when you saw him before the  
15 jury trial.

16 A. He had me in a holding cell, and I talked to him. I told  
17 him that I don't want to continue with the statement, because it  
18 wasn't true. And he made me, you know, come in there and  
19 finish.

20 Q. How did he make you do that?

21 A. He told me that I had to go in there. And I told him, I  
22 said I don't want to do it. So I -- you know, I went along with  
23 it. Came in there and said those things.

24 Q. And you did, in fact, testify at William Avery's criminal  
25 trial, right?

1 A. Yes.

2 Q. And you testified that you overheard William Avery have a  
3 conversation with Antron Kent at the trial, right?

4 A. Yes, I said that.

5 Q. And we've already been over this. That testimony was false,  
6 right?

7 A. Yeah.

8 Q. Your testimony that --

9 A. -- yes --

10 Q. -- you overheard William Avery telling Antron Kent that he  
11 choked and killed a woman and then got rid of her body. That  
12 was false testimony, right?

13 A. Yes.

14 Q. Now, did you ever overhear William Avery tell Antron Kent  
15 that he choked and killed a woman?

16 A. No.

17 Q. Did you ever overhear William Avery tell Antron Kent that he  
18 got one of his guys and got rid of the body?

19 A. No, I never heard him. I just went off of what Kent  
20 provided.

21 Q. Did you ever overhear William Avery have any kind of  
22 conversation with Antron Kent? Ever?

23 A. No. I want to say I remember him being in the drug program,  
24 and they don't -- they don't let the program guys go with  
25 general population to rec. So, you know, that was -- he wasn't

1 present. That was false.

2 Q. So the conversation at rec couldn't have happened? Is that  
3 what you're saying?

4 A. No, no. Because they go to rec by themselves.

5 Q. Have you had any contact with William Avery since your  
6 criminal trial?

7 A. No.

8 Q. Why have you decided to come forward now and tell the truth  
9 about what happened?

10 MR. SMOKOWICZ: Objection. Leading.

11 THE COURT: Overruled.

12 MR. ELSON:

13 Q. You can answer.

14 A. It was the rightful thing to do. I didn't know anything  
15 about it, and when it brought -- it was brought up to me about  
16 like 13 years ago, I wasn't -- I wasn't thinking, you know. I  
17 kind of let him persuade me to do that. But now it's the  
18 rightful thing to do, you know. It wasn't true.

19 Q. And Mr. Avery is here in court? You see him?

20 A. Yes. Yes.

21 Q. Is there anything you want to say to Mr. Avery now that you  
22 have the opportunity?

23 MR. SMOKOWICZ: Objection. Relevance, Your Honor.

24 THE COURT: Yeah. Sustained.

25 MR. ELSON: No further questions, Judge.

1 THE COURT: Cross examination.

2 MR. SMOKOWICZ: Thank you, Your Honor.

3 **CROSS EXAMINATION**

4 **BY MR. SMOKOWICZ:**

5 Q. Sir, you met with the attorneys for Mr. Avery before you  
6 testified today?

7 A. No.

8 Q. You don't recall meeting with any of the individuals at the  
9 table here today?

10 A. No, I don't talk to nobody before coming.

11 Q. When Detective Heier and the other Detective came to  
12 Oklahoma to meet with you, did they write out a statement for  
13 you?

14 A. Yes, they wrote.

15 Q. And was the statement based upon what you were telling them?

16 A. Yes. Yes.

17 Q. And did they show you that statement?

18 A. Yes.

19 Q. And did they have you sign that statement?

20 A. Yes.

21 Q. And you signed it freely and willingly?

22 A. Yes, I did.

23 MR. SMOKOWICZ: Your Honor, may I display this to the  
24 witness?

25 Q. Have you seen this statement before?

1 A. Yes.

2 Q. That's the statement that you gave in Oklahoma. That was  
3 signed by you in Oklahoma, I should say?

4 A. Yes.

5 MR. SMOKOWICZ: Offer defense Exhibit 1018, Your  
6 Honor.

7 MR. ELSON: No objection.

8 THE COURT: The Court will receive it.

9 MR. SMOKOWICZ:

10 Q. The top of the statement here has some information about  
11 your family, correct?

12 A. Yes.

13 Q. And the bottom part of the statement here where my finger  
14 is, the interview took place at the North Fork Correctional  
15 facility in Sayre, Oklahoma. That's correct, right?

16 A. Yes.

17 Q. And he, meaning you, is in prison for a 40 year sentence for  
18 first degree reckless homicide, and has done 4 years. That was  
19 true at that time?

20 A. Yes.

21 Q. And he has been here since September 15th, 1999. I take it  
22 that was true?

23 A. Yes.

24 Q. And you were shown a photo array, correct? You were shown a  
25 series of pictures? Do you not recall that?

1 A. No, it's been so long. I have --

2 Q. Okay. Well, let me read this here just so that we maybe can  
3 refresh your memory about it. He was shown photo I.D. 10303 and  
4 pointed out the person in position number 4 as William Avery,  
5 stating that he is the person he got the information about a  
6 homicide. Does that refresh your memory that you were shown a  
7 handful of photographs?

8 A. Yes. Yeah. Yeah.

9 Q. And you did pick out William Avery from those pictures?

10 A. Yes, I did.

11 Q. So you knew at that time what William Avery looked like?

12 A. Yes. I seen him all the time.

13 Q. And it goes on to state that you met William Avery through  
14 his cellmate, Antron Kent. First of all, was your cellmate at  
15 that time Antron Kent?

16 A. Yes.

17 Q. And did you meet William Avery through your cellmate?

18 A. No. No.

19 Q. Goes on to state he sees William every day in computer  
20 class. Whoops. I'm so sorry. The word is on the previous  
21 page. He sees William every day in computer class. Did you  
22 write that -- or did you -- did you see him every day in  
23 computer class?

24 A. Yes, I seen him going to classes.

25 Q. And you were in computer class with him?

1 A. No, I wasn't in computer class. Just the same building.

2 Q. Okay. Goes on to state the first time he met Avery was out  
3 at a recreation area. He believes was in March of this year,  
4 2002, with Antron Kent. Did you tell the Detectives that?

5 A. Yes.

6 Q. And was that true?

7 A. No, it wasn't true.

8 Q. And that was untrue? That was something that Antron Kent  
9 told you to say?

10 A. Yeah. That was -- that was information that Kent had.

11 Q. Goes on to state that recreation starts at 1:40 p.m., then a  
12 second rec period starts at 2:35 p.m., ending at 3:30 p.m. Was  
13 that correct?

14 A. I think so. I can't remember the time.

15 Q. Antron -- goes on to state Antron told Avery that when he  
16 gets out, he wants to go to church. Did you hear Antron Kent  
17 tell Avery that?

18 A. No.

19 Q. So that was not true?

20 A. No, that wasn't true.

21 Q. This was something that Mr. Kent told you to say?

22 A. Yes.

23 Q. He said that because Antron's Dad is a pastor, Avery said he  
24 wanted to "put this all behind him". First of all, was Antron's  
25 Dad a Pastor?



1 A. His grandfather was, from what he told me.

2 Q. This is what he told you, though, is that -- to say -- to  
3 tell the Police that his Dad was a Pastor?

4 A. Yes.

5 Q. Goes on to state Avery said he can't sleep anymore. Did you  
6 tell the Police that?

7 A. Yeah, I told them.

8 Q. And was that true?

9 A. No, it wasn't.

10 Q. And was that something Antron Kent told you to say?

11 A. Yes.

12 Q. Antron said what did you do? Did Antron Kent tell you to  
13 ask that? To say that he asked Avery that question?

14 A. I can't -- I can't remember on that one.

15 Q. Avery said that he had a spot getting his money. Okay. Did  
16 Antron Kent tell you to talk about a spot where Avery would get  
17 his money?

18 A. Yes.

19 Q. He was dope dating a hype, and he had sex for dope. Is that  
20 something Antron Kent told you to tell the Police?

21 A. No, he didn't. He didn't tell me that.

22 Q. Did you add that in there?

23 A. Yeah.

24 Q. He gave her some dope and she smoked it. Did Kent tell you  
25 to say that?

1 A. No, he didn't tell me to say that. It's just something that  
2 I --

3 Q. That you added in?

4 A. Yeah. I had information on this -- you know, it was --

5 Q. Details to make the story out?

6 A. Yes.

7 Q. He gave her some dope and she smoked it. He said they went  
8 to sleep that night, and when he woke up in the morning time she  
9 was smoking his shit and had the dope bag. Is that something  
10 Antron Kent told you to say?

11 A. That was kind of like made -- it was made up. He kind of  
12 gave me information, but some of the stuff was -- it was -- it  
13 was added in.

14 Q. You added that detail in on your own. He said he just,  
15 quote, snapped and choked the bitch, close quote. Is that  
16 something that Antron Kent told you to say?

17 A. Yes. He basically came over most of the story. I just said  
18 some -- some things in there that wasn't true.

19 Q. He demonstrated to Antron with his hands how he did this,  
20 and said her eyes rolled in the back of her head and she made a  
21 gagging sound. Is that something Antron Kent told you to say?

22 A. Yeah. He came up with all that. Told me to make it seem  
23 like that. He -- you know, he said those things.

24 Q. He said she stopped breathing. And is that what Antron Kent  
25 told you to say?

1 A. Yes.

2 Q. Antron made a comment about his long fingernails. Is that  
3 something Antron Kent told you to say?

4 A. I can't even remember. It's a lot of stuff.

5 Q. He realized that he had killed her, so he called his guy to  
6 help him get rid of her. Is that something Kent told you to  
7 say?

8 A. Yeah. He went over that.

9 Q. Avery said that his guy had a truck and dumped her  
10 somewhere. Is that something Antron Kent told you to say?

11 A. Yeah.

12 Q. States there were things that he didn't hear because he was  
13 walking behind Antron and Avery approximately 4 to 5 feet. Is  
14 that something you just added?

15 A. No. He made the story up.

16 Q. So Antron told you that part of it, too?

17 A. Yes.

18 Q. Antron Kent. Sir, is that your signature there?

19 A. Yes.

20 Q. And also is that your signature there?

21 A. Yes.

22 Q. And this was all read to you and you signed it?

23 A. Yes.

24 Q. And you signed it -- did you tell the Detectives there that  
25 you were willing to testify against William Avery? I'm reading

1 the sign here, he is willing to testify against William Avery.

2 You told the Detectives that, right?

3 A. Yes.

4 Q. It says Detective Armbruster and Detective Heier made no  
5 promises to Jeffrey regarding reducing his sentence or in  
6 regards to any promises at all. You put -- that's your  
7 signature right after that statement?

8 A. Yeah. No, they didn't make no promises.

9 Q. They made no promises right? Before coming to testify  
10 today, did you have the opportunity to review your testimony  
11 from the criminal trial against Mr. Avery?

12 A. No, I just kind of -- no.

13 Q. No one's given you a copy of that testimony?

14 A. Yeah, I had got a copy of it.

15 Q. Who gave you that copy?

16 A. It was -- I can't think of his name. The guy right there.  
17 I forgot his name. Kind of nervous a little bit.

18 Q. One of the gentlemen at the table behind me here?

19 A. Yes.

20 Q. Which one? There are 2. Three, actually. Could you  
21 describe what he's wearing? Or color of his hair?

22 A. His hair is blond.

23 MR. ELSON: Stipulate I gave him a copy of his  
24 testimony.

25 MR. SMOKOWICZ: Your Honor, I'm going to offer Exhibit

1 1002, the testimony of Jeffrey Kimbrough at the trial of State  
2 of Wisconsin versus William Avery.

3 MR. ELSON: No objection.

4 THE COURT: That's 1002?

5 MR. SMOKOWICZ: It is, Your Honor.

6 THE COURT: The Court will receive it.

7 MR. SMOKOWICZ: Thank you, Your Honor.

8 Q. Beginning on Page 72, at line one. See at the top of the  
9 page there. You were asked by the District Attorney: Were you  
10 housed with the Defendant in a correctional institution? And  
11 you answered the question yes. That was true, correct?

12 A. Yes.

13 Q. Before we get any farther -- before you testified that day,  
14 you raised your right hand and swore to tell the truth, didn't  
15 you?

16 A. Yes.

17 Q. The next question you were asked is that you were also  
18 housed with Antron Kent? And your answer was: Yes. That was  
19 true also, wasn't it?

20 A. Yes.

21 Q. Next you were asked whether you had any classes or did you  
22 have contact with the Defendant in that institution? And you  
23 answered: I went to school in the same building. I went to  
24 computer class. That was true?

25 A. Not the computer class part, because I didn't have that

1 class.

2 Q. And the next question you were asked about contacting  
3 Mr. Avery. Did he ever talk to you? And you answered: No.  
4 That was true, wasn't it?

5 A. Yes.

6 Q. The next question. Did you ever -- did you ever overhear  
7 him talking to Antron Kent? And you answered: Yes.

8 A. Yeah, I said that.

9 Q. You said that?

10 A. Yeah.

11 Q. After raising your right hand and swearing to tell the  
12 truth, you said that you had overheard this conversation?

13 A. Yes, I said that.

14 Q. Next question. And did you ever hear him talking about  
15 Mr. -- Mr. Kent about a homicide? And your answer to that was:  
16 Yes.

17 A. Yeah.

18 Q. You said that as well, right?

19 A. Yeah.

20 Q. And you said that after raising your right hand and swearing  
21 to tell the truth, right?

22 A. Yeah.

23 Q. The next page, 73, beginning at line one. Did you ever hear  
24 him saying anything to Mr. Kent about a homicide? Your answer  
25 was: Yes. You swore to tell the truth when you answered that

1 question, right?

2 A. Yes. That was at trial. I didn't want to go along with  
3 that, but I said those things because I was made to come and say  
4 it.

5 Q. Next question you were asked was: What did you hear him  
6 say? And your answer was: Well, Tron -- he was talking to  
7 Antron and he was talking about his father was a Pastor. That  
8 was your answer to that question. Was that true?

9 A. He mentioned something about his father or something was a  
10 Pastor.

11 Q. Whose father was that? And your answer was: Antron.

12 A. Yeah.

13 Q. Next question at line 12 there. And what did you hear him  
14 say to Antron? And your answer was: Well, he had mentioned  
15 that he had -- he had this spot and -- and that's your testimony  
16 there, right?

17 A. Yes.

18 Q. That's what you swore to tell the truth to, right?

19 A. Yes.

20 Q. Next question after that. What's a spot? And your answer  
21 was: A spot is a place, you know, where they have dope and  
22 stuff. And he said he had a dope date, and he said that when he  
23 had woke up he said that he had noticed that his dope was gone  
24 and so he choked the lady. That was your answer to that  
25 question, right?

1 A. Yes.

2 Q. And you had sworn to tell the truth when you answered that  
3 question, right?

4 A. Yeah, I was -- I said that.

5 Q. You had sworn to tell the truth, correct?

6 A. Yeah. But I didn't want to go along with it because --

7 MR. SMOKOWICZ: Your Honor, the witness has answered  
8 the question. I ask he be admonished to simply confine his  
9 answers to the question.

10 THE COURT: Okay. You have to do that, Mr. Kimbrough.  
11 You have to just answer the question that you're asked.

12 THE WITNESS: Okay.

13 MR. SMOKOWICZ:

14 Q. The next question. And where were you in reference to  
15 Antron and Mr. Avery when you heard this? And your answer was:  
16 We was at rec. That was your answer to that question, right?

17 A. Yes.

18 Q. And you swore to tell the truth when you answered that  
19 question?

20 A. Yes.

21 Q. And your next question that you were asked was: And did he  
22 describe how he choked the young lady? And your answer was:  
23 When he scratched her, his nails had dug in her. That was your  
24 answer to that question, wasn't it?

25 A. Yes.



1 Q. And you swore that you would tell the truth when you  
2 answered that question?

3 A. Yes.

4 Q. Going down to the question at line 5. Did he ever  
5 demonstrate that -- when you saw him talking to Antron how he  
6 choked the lady? And you answered: Yeah. That was your answer  
7 to that question, wasn't it?

8 A. Yes.

9 Q. And then you were asked: Can you show the jury how he  
10 demonstrated to Antron? And your answer was: I'm behind him  
11 but he was talking to Antron. And that was your answer to that  
12 question as well, wasn't it?

13 A. Yes.

14 Q. Going on further on down the page, the line begins at  
15 question 17. Did he tell you what type of woman this was that  
16 he choked? And your answer was: Yeah, she was a hype. That  
17 was your answer to that question?

18 A. Yes.

19 Q. And you swore to tell the truth when you answered that one,  
20 right?

21 A. Yes.

22 Q. Next question you were asked is: What does a hype mean to  
23 you? And the answer was: Dope fiend, right?

24 A. Right.

25 Q. And the next question you were asked: And did he tell you

1 what he had done with that lady, if anything, before he choked  
2 her? And your answer was: Well, when he choked her, you know,  
3 he said she gagged and he had killed her, so him and his guy got  
4 rid of her. That was your answer to that question?

5 A. Yes.

6 Q. And you swore to tell the truth when you answered that  
7 question?

8 A. Yes.

9 Q. Question next was: Did he tell you how he and his guy got  
10 rid of the woman? And your answer was: He just said they had a  
11 truck and they got rid of her. That was your answer to that  
12 question?

13 A. Yes.

14 Q. At line 8, the question you were asked: And did you come  
15 forward and tell the Police this? And your answer was: Antron,  
16 he did at first, and he talked me into going ahead and coming  
17 forward. That was your answer to that question, right?

18 A. Yes.

19 Q. And that was true, actually? About him talking you into  
20 coming forward? Antron Kent did that, right?

21 A. I mean, he talked.

22 Q. Next question you were asked was: And did you come forward?  
23 And your answer was: I thought -- excuse me. The next question  
24 was: And why did you come forward? And your answer was: I  
25 thought it was the right thing to do. That was your answer to

1     that question, right?

2     A.   I said that, yes.

3     Q.   And you swore to tell the truth when you were asked why did  
4     you come forward, right?

5     A.   Yes.

6     Q.   And then you were asked:  Has anyone promised you anything  
7     for this?  And you said:  No.  True?

8     A.   True.

9     Q.   And do you expect anything?  And your answer was:  No.  
10    True?

11    A.   True.

12    Q.   And why are you doing this was the last question you were  
13    asked by the prosecutor.  And your answer was:  Just doing it  
14    out of free will.  You answered that question that way, didn't  
15    you?

16    A.   I said that.

17    Q.   And you swore to tell the truth when you answered that  
18    question as well?

19    A.   I did.

20                 MR. SMOKOWICZ:  That is all I have, Your Honor.

21                 THE COURT:  Any redirect?

22                 MR. ELSON:  Just one minute, Judge.

23                 THE COURT:  Sure.

24                 MR. ELSON:  Nothing based on that, Judge.

25                 THE COURT:  Okay.  All right.  Then the witness is

1 excused. Let's have a side-bar here.

2 (Whereupon a side-bar conference was held off the  
3 record. Upon conclusion of the side-bar conference, the  
4 proceedings continued as follows:)

5 THE COURT: We're waiting for some conveyance?

6 MS. HOFT: Oh, because Mr. Stainthorp just went to get  
7 the next witness.

8 THE COURT: Well, he'll have to wait in back.

9 **KEITH RANDOLPH**, called as a witness, having been first  
10 duly sworn, on oath testified as follows:

11 THE CLERK: Please state your full name and spell your  
12 last name for the record.

13 THE WITNESS: Keith Roosevelt Randolph. Last name  
14 R-A-N-D-O-L-P-H.

15 **DIRECT EXAMINATION**

16 **BY MS. HOFT:**

17 Q. Good morning, Mr. Randolph.

18 A. Good morning.

19 Q. How old are you?

20 A. 50 years of age.

21 Q. And did you testify at a homicide trial against William  
22 Avery?

23 A. Yes.

24 Q. And was that in March of 2005?

25 A. Yes.

1 Q. Were you called to testify by the State?

2 A. Yes, I was subpoenaed by the State to the Wisconsin  
3 Department of Corrections.

4 Q. And were you in custody at that time?

5 A. Yes, I was at that time.

6 Q. Are you in custody now?

7 A. No.

8 Q. How long have you been a free man?

9 A. Since November 17th of last year.

10 Q. And do you know an individual by the name of William Avery?

11 A. Yes.

12 Q. How do you know Mr. Avery?

13 A. I met Mr. Avery in '95 actually through a former girlfriend  
14 of mine, slash, fiancée. Her name was Lorraine Bowers  
15 (phonetic).

16 Q. And were you -- were you ever incarcerated with Mr. Avery?

17 A. Yes, actually one time we were in general population at  
18 Dodge Correctional Center, which is in I believe Waupun,  
19 Wisconsin.

20 Q. And did Mr. Avery ever share with you any of his legal  
21 papers?

22 A. Later, yeah. At some point. He was incarcerated on drug  
23 charges.

24 Q. And do you know why he did that? Why he shared those papers  
25 with you?

1 A. He knew that I had knowledge of the law libraries, and my  
2 grandfather had been a lawyer. And I'm not a lawyer, but I was  
3 I guess what you call a jailhouse lawyer, for lack of better  
4 words.

5 Q. And did you communicate with the Police prior to being  
6 subpoenaed to testify at William's trial?

7 A. Yes.

8 Q. And tell me the first time that you spoke to any Milwaukee  
9 Police Detectives about Mr. Avery?

10 A. That would have been -- it was actually -- I remember the  
11 day, because it was on my birthday. March 21st of 2005, I  
12 believe. 2005.

13 Q. How many years ago --

14 A. I mean 2001. I'm sorry. I'm sorry.

15 MR. SMOKOWICZ: 2001?

16 THE WITNESS: Yes. 2001.

17 MS. HOFT:

18 Q. And who did you meet with in March of 2001 from the  
19 Milwaukee Police Department?

20 A. A couple of Detectives. I think one of them's name was  
21 Auer, Eier (phonetic), something like that. Another one, I  
22 don't remember his name. I was transported from the House of  
23 Corrections, which is in Franklin, Wisconsin, where I was being  
24 housed, due to overcrowding at the Milwaukee County Jail,  
25 downtown to interrogation. And my lawyer, who is a State Public

1 Defender, was there. His name was Attorney Joe Canton or Caton.

2 Q. And what happened at that first meeting with the Milwaukee  
3 Police Detectives where you discussed Mr. Avery?

4 A. I had never been in there with homicide Detectives. I never  
5 been involved with anything violent. And they took me in a  
6 room. This particular room was smaller where they could cuff  
7 you to the wall. And they had a camera in the room. I remember  
8 that. And they asked me if I wanted cigarettes, sodas. Of  
9 course I accepted both, even though I wasn't much of a smoker.  
10 I was a little nervous. And my attorney was there initially.  
11 Joe Caton. He came in and spoke to me and says well, they want  
12 to speak to you. Find out anything you know about this Avery  
13 guy.

14 Q. And then what happened during that first meeting?

15 A. Well, what the part -- the beginning of the meeting was  
16 strange to me, because my knowledge of the law is that you have  
17 a right to have counsel present. And my attorney left the room.  
18 And left me in with these homicide Detectives alone. And I  
19 found that very strange. Made me very uncomfortable.

20 Q. Did those homicide Detectives provide you any information  
21 about William Avery or what they wanted to talk to you about?

22 A. Yeah. In a -- what I call a round about way, if I may say  
23 that word. Began to tell me things like a street called  
24 Burleigh. Which I know what Burleigh is, because I lived in  
25 Milwaukee. But I had no knowledge that this particular street,

1 this particular location. They had a folder in front of them.  
2 It had some photographs in it. And on that folder there was  
3 some names written on it. I saw my name, and I saw another name  
4 of a Melvin someone. And then they began to ask me about  
5 Mr. Avery's background with women. Had I ever known him to be  
6 violent? Have I ever seen him strike a woman? Do I think he'd  
7 be capable of harming a woman? Seriously. And I told them no,  
8 I know him from my girlfriend. That yeah, he had had a few  
9 arguments with girlfriends in the past, but nothing that would  
10 lead me to believe he would actually seriously harm someone.

11 Q. And during that -- you mentioned during that first meeting  
12 that the Police gave you a street name of Burleigh. And you  
13 know where that is?

14 A. Sort of, kind of. You know, when I used to live in  
15 Milwaukee, I was on the south side.

16 Q. When is the last time you were in Milwaukee?

17 A. Oh, my God --

18 Q. Before today.

19 A. Before today it was January 2nd, I believe, 2007. I flew in  
20 an airplane to St. Louis for an interstate compact. And my  
21 parole from Wisconsin was transferred with me to Illinois.

22 Q. During that first meeting with the Milwaukee Police  
23 Detectives, did they make any promises to you?

24 A. Yeah. That they come to my sentencing hearing. That they  
25 speak favorably of me. Because I was locked up at that time for



1 prescription drug fraud. And that they'd do all they could to  
2 help me. And that they know I had heard in the past how  
3 Detectives make all these promises, but they would really come.  
4 And they actually did come to my sentencing for the prescription  
5 drug fraud.

6 Q. And do you know which Detective came to your sentencing from  
7 the Milwaukee Police Department?

8 A. I don't remember his name. I remember my sentencing,  
9 because the Judge said in his entire years on the bench he'd  
10 never had a sentencing hearing that lasted hours. And the Judge  
11 found it strange that they wanted to bring up a homicide  
12 Detective, when he had a guy in front of him with a non-violent  
13 prescription drug.

14 Q. And did you ever meet with Milwaukee Police Department  
15 Detectives again after that first time on your birthday in March  
16 of 2001?

17 A. Yes, actually I did. When -- okay, after that March meeting  
18 on my birthday, I pled guilty -- had to be -- I don't know the  
19 exact date. Six to eight weeks later, which would have been in  
20 May of 2001. I was sentenced. Took a plea bargain. I was sent  
21 to Dodge Correctional from Milwaukee. You know, House of  
22 Corrections, which is the process. When I was in Dodge they  
23 decided to keep me in general population, which they sometimes  
24 do to non-violent. You know, the population at Dodge, for lack  
25 of a better word, is considered -- you have to be less

1 aggressive. You can't be a very violent inmate, because it's  
2 receiving.

3 And so when I was there in receiving, they called me  
4 one day. Said Mr. Randolph, you have a visitor. And I found  
5 that strange. Because I'm from East St. Louis, Illinois, and I  
6 don't have one biological family member in Wisconsin. And they  
7 would let me know if they were coming. So I go to the visiting  
8 room and there's City of Milwaukee homicide Detectives.

9 Q. And during that first meeting, was there any discussion  
10 about William Avery being responsible for the murder of Maryetta  
11 Griffin?

12 A. Yeah. That's when much more detail came out. Like I said,  
13 that first meeting, there was just a little file, you know, with  
14 my name, and a Melvin name, and some other -- some notations  
15 wrote in. I don't remember all the notes that were on the file.  
16 But then when they came into Dodge, and I'm a State prisoner  
17 now, now I see a photo -- it was almost like someone -- they  
18 wanted me to accidentally see it. Because I'm not stupid. The  
19 photo slid out, and it was a deceased person, and there was a  
20 photo -- looked like what would be human remains or something  
21 rolled up in a carpet. And so then they began to ask me, had I  
22 seen Mr. Avery? I said no. Informed me that he had been  
23 convicted. Informed me that they were going to have him moved  
24 to general population to purposely be closer to me, with the  
25 hopes of obtaining I guess more information, if you will. On

1 him somehow opening up to me and confessing to a murder.

2 Q. And do you remember who those Milwaukee Police Department  
3 Detectives were?

4 A. No. Nor do I remember the exact day.

5 Q. And how many times did you meet with Milwaukee Police  
6 Detectives about William Avery?

7 A. Oh, a bunch of times. Now, that -- that's the one time at  
8 Dodge, like I said. And then they met with me -- I was at a --  
9 I went to several prisons in Wisconsin. I was transferred to  
10 one called Stanley, which is a newer -- well, it was then -- up  
11 north. And I worked in the law library there as a law clerk.  
12 And then they transferred me to Prairie du Chien, which used to  
13 be a youthful offender like juvenile, slash, near the Iowa  
14 border past Madison. But they sent me there as an older inmate,  
15 because even though the population wasn't in my age range, my  
16 behavior had indicated that I would be a positive influence,  
17 which I was, on the young men there. I was a basketball coach  
18 at Prairie du Chien prison.

19 And they -- the homicide Detectives came to Stanley to  
20 see me. So that would be visit number two. They came to  
21 Prairie du Chien Correctional Center at least 3, 4 times. So if  
22 I were to sum total it while I was in the Illinois Department of  
23 Corrections, I got at least 6 visits from homicide Detectives.  
24 And as I tried to say formerly, because there seems to be some  
25 confusion about that -- the Wisconsin Department of Corrections,

1 when you visit someone, there's a record of that. Whether it's  
2 your Mom, your Dad, your lawyer, you cannot step grounds on a  
3 State prison and visit a State inmate without it being logged  
4 in.

5 Q. And did you discuss with the Milwaukee Police Department  
6 Detectives that William had confessed to you to having sex with  
7 and strangling Maryetta Griffin?

8 A. At one point, yeah. Because when they came and visited me,  
9 it was as though with each visit -- again, this is my  
10 perception. And this -- I'm the one speaking on behalf of it --  
11 I was being fed information. I was being, you know, paint a  
12 picture. I was like okay, yeah. You guys came to my sentencing  
13 hearing for this non-violent prescription drug fraud, but now  
14 you're coming and visiting me, and I'm already sentenced, I've  
15 accepted a plea, and you keep coming and visiting me, and you're  
16 telling me this and telling me that. And we're going over this  
17 again, that you -- last time you met with me, well this. And  
18 want to look at that, Keith? What you told us last time? Well,  
19 it kind of like a script was being put together, for lack of a  
20 better word. And that's really what happened, you know. I  
21 guess I was going to be used as what you call a jailhouse  
22 informant, you know. A rat. A snitch in the real world.  
23 Whatever you call it.

24 Q. How many total times did you meet with the Milwaukee Police  
25 Department Detectives when they went over and over the testimony

1 you were expected to give at Mr. Avery's trial?

2 MR. SMOKOWICZ: I'm going to object to the form of  
3 this question as leading.

4 THE COURT: It is, but he may answer, if he can.

5 THE WITNESS: They came more rapidly as it got closer  
6 to the trial. What I mean by that is the trial was in 2005. I  
7 was at Prairie du Chien, past Madison. And instead of the  
8 usual, here's the homicide Detectives again, once a year, or  
9 once every -- you know, 9 months. Now they came once, came back  
10 again, and then that's when -- I'll be honest with you, in my  
11 mind I saw what was going on. The picture on the wall, okay?  
12 They want Mr. Avery. They want to convict him of a murder. But  
13 in my mind as a convict, as a man incarcerated, here they were  
14 coming to see me in 2005, and I'm at this sweet prison with  
15 these little minors. You know, it's like a college campus. And  
16 I go home in 18 months. And I got the best job at the prison.  
17 I got the best situation for doing time in Wisconsin, if you  
18 want to call it that.

19 And -- but when they came then it was like, okay, read  
20 over this, read over that. They didn't leave me a copy ever of  
21 anything. I won't say that. But look over this. Get ready,  
22 because we're going to go to trial. And we want you to remember  
23 what you told us.

24 MS. HOFT:

25 Q. Did you have any knowledge of the Maryetta Griffin murder?

1 A. Absolutely not. I mean, my initial knowledge -- if my  
2 memory serves me right, I was in the House of Corrections in  
3 Franklin. And they have these T.V.'s in the day room. You can  
4 hardly hear them because it's so crowded in the House of  
5 Corrections. And they had on the news one day that a female was  
6 found murdered, strangled. And I remember I had saw one before  
7 or something, so at that time they weren't sure yet, but they  
8 were looking at a possible linkage, slash --

9 MR. SMOKOWICZ: Your Honor, this is not responsive and  
10 it's hearsay.

11 THE COURT: Well, it's his impressions of what he saw.  
12 The Court will allow it.

13 MS. HOFT:

14 Q. Were you done with your answer? I can ask you another  
15 question.

16 A. Yeah.

17 Q. Did William Avery ever tell you he murdered or strangled  
18 Maryetta Griffin?

19 A. Absolutely not.

20 Q. Did the Milwaukee Police Department Detectives -- well, let  
21 me ask you this. Do you recall ever being visited by a  
22 Detective Hernandez from the Milwaukee Police Department?

23 A. Yeah. I'm not positive Hernandez. I believed it was.  
24 That's the name that came to my mind. Because people often  
25 confuse me as being partially Latino because I have curly gray

1 hair or whatever. And I remember this Detective, and I knew he  
2 was, you know, Hispanic. And so I guess Hernandez -- I won't  
3 say I grab the name out of the air, but it was the name I  
4 remember.

5 Q. And do you remember any promises that Detective Hernandez  
6 gave to you?

7 A. Oh, yeah. That this guy said he would specifically speak --  
8 because I was concerned. Because like I said, this is 2005.  
9 I've been locked up since -- I got locked up on day before  
10 Valentine's Day, 2001. So now I'm serving my sentence, truth in  
11 sentencing in the State of Wisconsin, and I go home in under two  
12 years. So now I'm like Burger King. You know, what you gonna  
13 do for me? Gonna have it my way. What's in this for me?

14 And so part of that thinking that I had in my little  
15 criminal mind at that time was speaking with him -- he says --  
16 he promised me he would speak with the State's Attorney handling  
17 the William Avery case about getting me something as a jailhouse  
18 informant. You know, out of the deal. And specifically  
19 something being not money. Not -- you know, going home earlier  
20 from prison. And I remember -- okay, I brought that up, you  
21 know, because of my knowledge. Then when he came back to visit  
22 me, which wasn't long, back at Prairie du Chien again, I says  
23 yeah, I spoke with the State's Attorney. I got good news.  
24 They're going to be willing to help you, Mr. Randolph, go home.  
25 You're gonna go home before January 2nd, 2007. But they don't

1 want to put it in writing, because when they subpoena you, and  
2 you come to Mr. Avery's trial, and you're asked possibly on open  
3 record has anyone made you a promise, they want you to be able  
4 to say no. In other words, kind of -- I saw it as a way around  
5 perjury, if you will.

6 Q. Mr. Randolph, I'm going to show you Defendant's Exhibit  
7 1049.

8 MR. SMOKOWICZ: What's the number?

9 MS. HOFT: 1049.

10 MR. SMOKOWICZ: Thank you.

11 MS. HOFT:

12 Q. Do you recognize what Defendant's 1049 is?

13 A. This is a statement from the day of that initial  
14 interrogation when I was in the House in Franklin, but taken  
15 downtown to the Milwaukee main interrogation bureau.

16 Q. And on this day Detective Heier wrote out this four page  
17 statement. You didn't write it out, correct?

18 A. No. No.

19 Q. But you signed this document I guess on the front? First  
20 page?

21 A. Yeah. And I notice I signed it a couple spots. Where I  
22 initialed, rather, where there's some misspelling of my name or  
23 something. My initials K.R. are on it.

24 Q. And is the contents -- or are the contents of this Exhibit  
25 true or false?



1 A. False.

2 MS. HOFT: I have no further questions, Your Honor.

3 THE COURT: All right. Cross examination. But we'll  
4 take that after lunch. Will be extensive cross examination, so  
5 now it's five after, approximately. So we'll have you back here  
6 after lunch. Please don't discuss the case, with anyone, only  
7 after all the evidence is in. The Court has to take another  
8 matter unrelated to this case, so you're going to get a little  
9 longer lunch today, to 1:30. Okay? So we'll see you after  
10 lunch.

11 (Whereupon the jury was excused at 12:05 p.m.)

12 THE COURT: Okay. 1:30.

13 (Whereupon a recess was called by the Court. Upon  
14 conclusion of the recess, the proceedings continued as follows:)

15 MS. HOFT: Your Honor, before Mr. Smokowicz begins his  
16 cross examination, he's agreed that we can move into evidence  
17 Plaintiff's Exhibit 24 with no questioning on it or anything.

18 THE COURT: Okay.

19 (Whereupon the jury was returned to the courtroom at  
20 1:34 p.m.)

21 MS. HOFT: Your Honor, at this time the Plaintiff  
22 would move into evidence Plaintiff's Exhibit 24, Keith  
23 Randolph's criminal trial testimony against William Avery,  
24 March 7th, 2005.

25 THE COURT: All right. The Court will receive that as

1 an Exhibit 24. Mr. Smokowicz.

2 MR. SMOKOWICZ: Thank you, Your Honor.

3 **CROSS EXAMINATION**

4 **BY MR. SMOKOWICZ:**

5 Q. Sir, outside of the courtroom in this case you provided some  
6 testimony back in January of this year, true?

7 A. Deposition, yes, sir.

8 Q. Yes. And prior to that deposition, you met with Mr. Avery's  
9 attorneys to go over your testimony in the case, right?

10 A. No. Not to go over my testimony.

11 Q. You met with them in the restaurant across the street from  
12 the Court Reporter's offices, didn't you?

13 A. No, I actually met with them at my home.

14 Q. The day before?

15 A. No. The day of. Rode with them to Belleville, Illinois,  
16 which is next to East St. Louis, where I'm from. I was hungry,  
17 asked to stop at Steak and Shake. Went there, bought my own  
18 lunch, and proceeded across the street for the deposition.

19 Q. Well, when you met with them you reviewed the materials that  
20 related to you in this matter, right?

21 A. No, not really. I scanned them. I didn't have time to meet  
22 for hours. And I sat there and --

23 Q. It's true that you are friends with William Avery, correct?  
24 You have been in the past?

25 A. In the past, yeah.

1 Q. And it's true that you were a pallbearer at his mother's  
2 funeral?

3 A. I was listed. I didn't actually carry it, but I attended  
4 the service.

5 Q. You were listed as a pallbearer, but you didn't carry the  
6 casket?

7 A. Honorary. In the African-American community, we have  
8 honorary.

9 Q. And you didn't actually attend the funeral?

10 A. Yes, I did.

11 Q. Oh, you did. I'm sorry. I misunderstood. Now, it's true  
12 that you've given a prior statement where you indicated that  
13 you'd celebrated many occasions with William Avery's family.  
14 True?

15 A. With William Avery. I mean, with some of his family.

16 Q. And he was actually part of your family in some ways at that  
17 time, true?

18 A. To an extent, yeah. He was associated with my fiancée.

19 Q. Sir, I'm going to show you a document that's been marked  
20 Exhibit 1049. Ask you to take a look at it. It's actually in  
21 front of you already. And you've testified that you recognize  
22 this document? You've seen this before?

23 A. Only when it was shown to me later.

24 Q. And that's your signature on the first page of it?

25 A. Yes, sir.

1 Q. Eight lines down?

2 A. Yes, sir.

3 Q. And it's also your signature on the last page?

4 A. Yes, sir.

5 Q. About 7 lines down?

6 A. Yes.

7 Q. And there are certain locations in this document where there  
8 are either words added, or sometimes scratched out, and there  
9 are initials there. Do you see those?

10 A. Yes.

11 Q. And those are your initials that are there?

12 A. Yes.

13 Q. And you wrote your initials there at those locations?

14 A. Yes.

15 MR. SMOKOWICZ: I don't know if this Exhibit's been  
16 offered, Your Honor. But I would offer Exhibit 1049.

17 THE COURT: The Court will receive it.

18 MR. SMOKOWICZ:

19 Q. Now, this statement reflects that you spoke to Detective  
20 Timothy Heier on March 21, 2001. Right there on the first line.  
21 Does that refresh your recollection that that's when you spoke  
22 with him? First?

23 A. Yes. As I said earlier, that's my birthday.

24 Q. And it's 2001, not 2002, correct?

25 A. 2001.

1 Q. And it indicates in that first line that you began speaking  
2 with him at 4:30 in the afternoon. Does that sound  
3 approximately correct to you from your memory?

4 A. Could be. Could be.

5 Q. As you sit here today, you can't dispute that that's when  
6 this began, right? You have no reason to doubt that?

7 A. No reason to dispute.

8 Q. And if we go to the last page right above your signature  
9 there, it shows a time of 11:56 p.m., correct?

10 A. Yes, sir.

11 Q. And is that the time that your interrogation, as you call  
12 it, but the questioning by Detective Heier ended on that day?

13 A. As I recall, yeah. To the best of my recollection.

14 Q. Again, you have no reason to say that's wrong as you sit  
15 here today?

16 A. No.

17 Q. I'm going to ask you to go back to Page 1. Continuing on  
18 with that first paragraph, it states I, Detective Timothy Heier,  
19 did read Keith R. Randolph -- that's your date of birth there --  
20 his Constitutional rights, Miranda warnings, in Room 407 of the  
21 Criminal Investigation Bureau. Not sure if that's 951, but it's  
22 West James Lovell Street. Do you remember being read your  
23 rights at that point?

24 A. No, but I can't dispute that they did.

25 Q. Also goes on to state also present when Constitutional

1 rights were read and during the interview was Randolph's  
2 attorney, Joseph R. Caton, C-A-T-O-N, Junior, of the State  
3 Public Defender's Office. First of all, is that the attorney --  
4 that's the attorney you've talked about before, right? Attorney  
5 Caton?

6 A. Right.

7 Q. And he was present at the beginning of this interview?

8 A. No, he was not. No, he was not.

9 Q. So he came -- he came in and left immediately?

10 A. They transported me down there from the House of  
11 Corrections. He was in the room waiting on me. We talked  
12 briefly. He kind of sensed my apprehension. He informed me the  
13 basic -- the best of his knowledge what was about to transpire.  
14 And then when the Detectives came in the room, he left. And I  
15 stated earlier, I found that strange. Because I thought you had  
16 the right to be questioned when counsel present.

17 Q. And again, sir, you recall that you were deposed in this  
18 case on January 8th of 2015?

19 A. Yes.

20 MR. SMOKOWICZ: I'm going to offer Exhibit 1051 into  
21 evidence. Transcript of the deposition.

22 MS. HOFT: Objection, Your Honor. The entire  
23 deposition?

24 MR. SMOKOWICZ: Yes. I'm not going to read the entire  
25 deposition. I'm only using it for purposes of questioning the

1 witness today.

2 THE COURT: Admitted into evidence for purposes of its  
3 use as you're using it.

4 MR. SMOKOWICZ:

5 Q. 57 and 58. Beginning at line 23 on page 57, and going to  
6 line 17 on page 58. Question: So you -- well, after that your  
7 signature is right underneath the time there, 11:56 p.m., right?  
8 Right. Question: So my arithmetic isn't nearly perfect, but  
9 from 4:30, to 5:30, 6:30, 7:30, 8:30, 9:30, 10:30, 11:30, that's  
10 7-and-a-half hours, isn't it? Answer: Give or take a few.  
11 Question: Yeah. And it's not two hours, is it? Answer: No,  
12 but again, the two hours was referring to the two hours with my  
13 attorney -- without my attorney present. Question: So you --  
14 answer: Not the entire. Question: So are you saying your  
15 attorney was there for 5 hours? Answer: My attorney was there  
16 when I first got there. My attorney was there when I left.  
17 Yeah, my attorney was there. Question: He was there the whole  
18 time? Answer: Somewhere, but for two hours he wasn't in the  
19 room with me. Okay. Answer: But he was there when I got there  
20 and when I left.

21 Now, it's your signature there on that eighth line on  
22 that first page of Exhibit 1049, right after the statement that  
23 you had been read your rights on at least 10 prior occasions and  
24 understood each of those times, and understands them now, and  
25 wishes to make a statement. Correct?

1 A. Yes, that's my signature.

2 Q. The statement goes on to read Randolph states that he has  
3 known William Avery, a/k/a Jodi, 32 years, black male, since  
4 1993, and knows his family, even being a pallbearer at the  
5 funeral of -- now, there's your initials there, right? Where  
6 that word Ralph is scratched out?

7 A. Um-hum.

8 Q. That's yes.

9 A. Yes.

10 Q. Avery's mother, Barbara Avery. So you did tell Detective  
11 Heier, did you not, that you had been a pallbearer at the  
12 funeral of Avery's mother, Barbara, correct?

13 A. I don't remember.

14 Q. So you wouldn't -- since this is written here, you wouldn't  
15 dispute that you told him that at that time, would you?

16 A. I can't, because I don't remember.

17 Q. Goes on to state Randolph was an inmate at the House of  
18 Correction, and while in, quote, Court staging, close quote,  
19 Randolph was to appear in court. Randolph saw and spoke to  
20 Avery in a housing cell, number 2, briefly. This was around  
21 March 26, 1998. You told Detective Heier those things, did you  
22 not? That you were an inmate in the House, in court staging,  
23 and while you were there you saw Mr. -- you saw William Avery  
24 briefly, correct?

25 A. I don't remember that.



1 Q. And again --

2 A. I had been in the House of Correction prior, though, on a  
3 number of occasions.

4 Q. It's consistent with your memory, in fact, that you were in  
5 the House of Correction about that time, correct?

6 A. Yes. Yes.

7 Q. Goes on to state: About one week later Randolph saw a  
8 newspaper article in the Journal about Avery and actually wrote  
9 him a letter telling him to keep his spirits up, close quote.  
10 You told Detective Heier that this had happened, right? That  
11 you'd seen an article and that you wrote William Avery to tell  
12 him to keep his spirits up?

13 A. I don't remember that.

14 Q. As you sit here today, do you have any reason to dispute  
15 that you told him that?

16 A. Yeah, because if I was in the House of Correction, I was  
17 probably a felony charge. I've never had a misdemeanor in my  
18 life. And I probably went to prison, and in prison you can't  
19 write other -- they monitor who you write. So I would not have  
20 written Mr. Avery.

21 Q. So you're telling me that this would be an untruthful  
22 statement if you made it to the Detective?

23 A. Yes. Yes.

24 Q. This goes on to state: At the end of July, 1998, while at  
25 the Dodge Correctional Facility, Randolph saw Avery again while

1 in the general population. Did you tell Detective Heier that  
2 you were in Dodge in July, 1998, when you saw Avery in the  
3 general population?

4 A. I believe I did.

5 Q. So in fact if you saw William Avery in the general  
6 population in Dodge in 1998, that was about 3 years before you  
7 ever spoke to Detective Heier, correct?

8 A. Yes.

9 Q. So you did not speak to Detective Heier before any claimed  
10 arrangements were made to place you in general population at  
11 Dodge Correctional after meeting with some Detective, right?

12 A. Wrong. I did. And they did make that happen. They visited  
13 me at Dodge Correctional Center. Mr. Avery was not in general  
14 population. After their visit Mr. Avery was moved to general  
15 population.

16 Q. This goes on to state: Randolph and Avery also ended up  
17 working together in the dining room serverly (sic). Did you tell  
18 Detective Heier that you had worked with Avery in the dining  
19 room serverly?

20 A. I believe so.

21 Q. Goes on to state: Randolph and Avery started getting close,  
22 as Avery's brother died and they had this in common and needed  
23 each other. You told that to Detective Heier as well, didn't  
24 you?

25 A. I don't remember that. I don't even remember his brother

1 passing. But I could have told him that.

2 Q. You could have said this in 1998 -- or pardon me. In 2001  
3 to Detective Heier?

4 A. I could have.

5 Q. And you have no reason to dispute this at this time, right?

6 A. No.

7 Q. Goes on to state: Randolph started looking at appellate  
8 issues, as Randolph has his Associate's Degree and is familiar  
9 with some legal -- and there again your initials appear, right?  
10 K.R.?

11 A. Yes.

12 Q. And that's -- you wrote the K.R. there, right?

13 A. Yes.

14 Q. Legal workings. You told Detective Heier, did you not, that  
15 you started looking at some appellate issues, and that was for  
16 William Avery, because you had your Associate's Degree at that  
17 time, and you were familiar with legal workings, correct?

18 A. Correct.

19 Q. Goes on to state: Avery presented Randolph with about eight  
20 pages of discovery, which included a handwritten statement. You  
21 told Detective Heier that, didn't you?

22 A. I don't remember. I could have. I can't say no, I didn't.

23 Q. And, in fact, when you were working with William Avery on  
24 his legal issues at Dodge Correctional in 1998, you did look at  
25 certain pages of discovery, including a handwritten statement?

1 A. Yes. Pertaining to criminal drug charges.

2 Q. Yes. And that handwritten statement was -- included a  
3 statement where Mr. Avery indicated that he had been responsible  
4 for the death of a woman, didn't it?

5 A. No, it did not. Best of my memory, it indicated a statement  
6 where he just simply admitted seeing the young lady. Or he was  
7 selling her narcotics, or something like that.

8 Q. Do you recall seeing this statement which has been marked as  
9 Exhibit 1030?

10 A. No.

11 Q. You don't recall this?

12 A. No, I don't. I'm not gonna tell you I recall, if I don't.

13 Q. So it's your testimony that you never saw, in part of your  
14 legal work for William Avery, while you were acting as a sort of  
15 jailhouse lawyer, this statement where he admits responsibility  
16 for killing Maryetta Griffin?

17 MS. HOFT: Objection. Mischaracterization.

18 THE COURT: Well --

19 MR. SMOKOWICZ: I'll rephrase it, Your Honor.

20 THE COURT: Okay.

21 MR. SMOKOWICZ:

22 Q. So it's your testimony, sir, that you never saw this  
23 statement that's been marked as Exhibit 1030?

24 A. It's my statement that I don't remember seeing anything like  
25 this.

1 Q. Okay. Now getting back to Exhibit 1049, which is the  
2 handwritten statement that you signed, it goes on to read  
3 Randolph had read the statement and he was out at the walking --  
4 and that's your initials right before the word walking -- track.  
5 Those are your initials before the word walking, right?

6 A. Yeah. K.R., yes sir.

7 Q. At Dodge. And that's your initials right before at Dodge,  
8 right? That's a K.R. there, right?

9 A. Yes.

10 Q. Talking to Avery one-on-one, with no one around to listen?

11 A. Um-hum.

12 Q. You told Detective Heier that you had read the statement out  
13 at the walking track to Avery one-on-one with no one around to  
14 listen, correct?

15 MS. HOFT: Objection. Mischaracterization, Your  
16 Honor.

17 THE COURT: Well, if the document says what it says,  
18 you have to ask the question in conformance with the document.

19 MR. SMOKOWICZ: I thought I did, Your Honor. But I  
20 will restate my question to make it clear.

21 THE COURT: Okay.

22 MR. SMOKOWICZ:

23 Q. Looking at this last sentence, you told Detective Heier the  
24 information contained there, right? That you had read the  
25 statement, and it was out at the walking track, talking to Avery

1 one-on-one with no one around to listen. You told him that,  
2 right?

3 A. If I might, you're using word play, sir. When I said the  
4 statement, that is written in the thing. But I'm talking about  
5 from the -- above, in the sentences earlier. The 8 pages of  
6 discovery items, of which the thing you just showed me a second  
7 ago I was not referring to.

8 Q. I understand that. I understand that's your testimony.  
9 What I'm asking is whether you said to the Detective at the time  
10 what's written in this statement, which is you read a statement,  
11 whichever one it was, handwritten. And it was out at the track  
12 talking to Avery one-on-one with no one to listen. You told  
13 Detective Heier that, right?

14 A. Right.

15 Q. All right. Let's go to the next page. Goes on to state  
16 there: Randolph knows this to be the summer of '98. Late  
17 August. Did you tell the Detective that?

18 A. What page are you on, sir?

19 Q. Page 2 of 4. Right at the top.

20 A. Yes, sir.

21 Q. Goes on to state: Randolph brought up his past violent  
22 behavior with women that Randolph knows firsthand, having saw  
23 the beatings Avery inflicted on his, Avery's, woman. Having had  
24 given one girl two black eyes. Now, this is a little --  
25 apparently a little misstated, but it apparently refers to Avery

1 having beaten women, including having given one two black eyes.  
2 First of all, do you recall telling Detective Avery (sic) this  
3 statement?

4 MS. HOFT: Objection. I object to the  
5 characterization. I think you misspoke. You said Avery.  
6 Detective Avery.

7 MR. SMOKOWICZ:

8 Q. Do you recall telling Detective Heier this statement?

9 A. No, I don't, but I remember when I first met this Detective  
10 Heier, him telling me --

11 Q. -- so you don't remember --

12 A. -- that he knew. No, I don't.

13 Q. I think you've answered the question.

14 A. I don't know.

15 Q. Is it possible you told him about Avery having trouble with  
16 women and you just don't remember that at this time?

17 A. No, because I -- something like that I would remember about  
18 Avery.

19 Q. Goes on to state Avery asked if he could confide in Randolph  
20 what had happened regarding -- and that's in initials there,  
21 K.R., above the word homicide. Those are your initials, right?

22 A. I see regarding, and I see my initials. But I don't see a  
23 word homicide.

24 Q. Okay. May I see your copy? Because if you look at the  
25 screen, you can see right there on the left hand corner of the

1 screen there, about 6 lines down.

2 THE COURT: Mr. Smokowicz, what I'm looking at is  
3 there's an "H" and half an "O" missing from the side.

4 MR. SMOKOWICZ: Right. What is there is  
5 O-M-I-C-I-D-E, right?

6 THE COURT: Yes. Half an "O".

7 THE WITNESS: What might be an O-M-I-C-I-D-E.

8 MR. SMOKOWICZ:

9 Q. Okay. And I'll read on the rest of the statement. And said  
10 in the exact words quote, man, what really happened, close  
11 quote, is I kept choking the bitch but I (sic) didn't pass out  
12 as I said in the statement to Police. And those are your  
13 initials right there before the words to Police, correct?

14 A. Yes.

15 Q. And, in fact, you told Detective Heier that day in 2001 that  
16 William Avery had said these things to you?

17 A. No, I told him whatever he wanted to hear that day. So  
18 yeah, I could have.

19 Q. This continues. Avery continued stating then I stopped to  
20 check my pockets to see how much of the work the bitch had  
21 stolen. You told Detective Heier that at that meeting, did you  
22 not?

23 A. I could have.

24 Q. Goes on to state: I wasn't sure how much she stole, but  
25 know some was missing. You told Detective Heier that Avery told



1 you that, right?

2 A. I could have.

3 Q. Goes on to state: Randolph asked what happened next? And  
4 Avery said that he slapped the bitch again, and then she -- then  
5 started choking her some more until she collapsed. You told  
6 Detective Heier that, didn't you?

7 A. I would have told him whatever he wanted to hear. And  
8 whoever wrote this -- I didn't write it. I would have told him  
9 Mickey Mouse did it.

10 Q. Goes on to state Avery said that he then had another shot of  
11 Crown Royal and lit a joint, stating -- and your initials are  
12 right before the word stating there, right?

13 A. Yes, sir.

14 Q. Fuck that bitch. You told Detective Heier this, didn't you?

15 A. I could have.

16 Q. Avery stated that he noticed that she wasn't coming to like  
17 the first time. Avery -- like the first time. I'm sorry.  
18 That's where the sentence ends. You told Detective Heier that,  
19 didn't you?

20 A. I don't remember. I could have.

21 Q. Goes on to state Avery said, quote, then I panicked, close  
22 quote. You told Detective Heier that, didn't you?

23 A. I could have.

24 Q. Goes on to state Avery said that he, quote, called a worker,  
25 close quote. And -- then your initials are right there, K.R. --

1 had her -- those are your initials. You wrote those in there,  
2 right?

3 A. My initials. That's not my handwriting after it, but yeah,  
4 those are my initials.

5 Q. Those are your initials. And then -- and had her wrapped up  
6 in a rug or something. You told Detective Heier that, didn't  
7 you?

8 A. No, that I didn't tell him, because I don't even talk like  
9 that. A worker? So that I know I definitely didn't tell him.

10 Q. Okay. You're saying that you didn't say, though, any of  
11 those words? Or just the word worker?

12 A. In that context. The word worker. But again, I would have  
13 told him whatever he wanted to hear that day.

14 Q. Okay. And while we're on the subject, you said you saw a  
15 picture of a dead woman in a rug. Is that what you said before?  
16 Today? At some point a Detective showed you a photograph of a  
17 deceased woman wrapped up in a rug. Is that what you -- you  
18 said that earlier in testimony when Miss Hoft was questioning  
19 you, right?

20 A. In prison.

21 Q. In prison. One of the Detectives showed you a --

22 A. Not on this date at the --

23 Q. Not on this date, right? But you were saying one day while  
24 you were in prison and talking to some other Detective, you were  
25 shown a photograph of a woman wrapped in a rug, correct?

1 A. Appeared to be a woman, correct.

2 Q. Appeared to be a woman. And appeared to be a rug, right?

3 A. Right.

4 Q. Avery said he then woke up Little "C" --

5 THE COURT: Mr. Smokowicz, I can't see that on my  
6 screen.

7 MR. SMOKOWICZ: Oh, I'm sorry. I appreciate, Your  
8 Honor. I forget that the whole page sometimes isn't here.

9 Q. I begin again where I was. Avery said he then woke up  
10 Little "C". You told Detective Heier that Avery told you that  
11 he had woken up Little "C"?

12 A. I could have.

13 Q. And then it says: She was dead at this time. That's what  
14 you told Detective Heier, right?

15 A. I could have.

16 Q. Goes on to state Little "C" -- and those are your initials  
17 right after that word, right?

18 A. Um-hum. Twice.

19 Q. Twice, right? Because two words were struck. So I'll read  
20 it without the struck words. Little "C" came in the room and  
21 said what the -- and it looks like F-U-C and I'm assuming it's  
22 what the fuck, unfortunately, you do. You told Detective Heier  
23 that Little "C" came in the room and said that, didn't you?

24 A. No. I'm gonna keep saying no. I would have told him  
25 whatever he want to say. Give me cigarettes. And whoever wrote

1 this --

2 Q. I think you've answered the question.

3 A. Okay.

4 Q. It goes on to state: Avery stated that he was still fucked  
5 up, and Little "C" and the worker took the girl out to the  
6 Blazer, and they all left and took her and they dumped her.

7 That's what you told Detective Heier, right?

8 A. I don't remember that.

9 Q. So it is possible that that's what you told Detective Heier?

10 A. It's possible.

11 Q. And, in fact, it's possible that what you told him is that  
12 not one but two people helped dispose of the body, right? In  
13 addition to Mr. Avery?

14 A. I could have told him that.

15 Q. Goes on to state: Randolph asked where did they take her  
16 and Avery said to the area of 9th and Burleigh. I'm going to  
17 stop there. You mentioned earlier that you had heard the street  
18 name Burleigh, right?

19 A. Right.

20 Q. And what you've told Detective Heier in this meeting in this  
21 interview was that the body had been taken to 9th and Burleigh,  
22 right?

23 THE COURT: Mr. Smokowicz, again I can't see what  
24 you're referring to.

25 MR. SMOKOWICZ: I apologize.

1 THE WITNESS: I didn't tell him that, because I  
2 wouldn't have known nothing about 9th and Burleigh, so --

3 MR. SMOKOWICZ:

4 Q. Well, you mentioned it earlier today in answering questions  
5 from Miss Hoft, that you talked about a street name Burleigh?

6 A. Yeah. When the Detectives came and saw me in prison.

7 Q. And you mentioned that -- you talked about a street named  
8 Burleigh, correct?

9 A. That they had mentioned. Not me. A street name Burleigh.

10 Q. It goes on to state that was -- and there's your initial  
11 right there on that line, K.R., right?

12 A. Yes.

13 Q. And you wrote that right there?

14 A. Initials, yes.

15 Q. That it was Little C's idea. Goes on to state Avery said  
16 that the girl was put in Little C's Blazer or sport utility  
17 vehicle, and this area was, quote, hot, close quote. That's  
18 what you told Detective Heier at that time, correct?

19 A. No. No.

20 Q. Goes on to state at the third page that: Randolph inquired  
21 from Avery the identity of Little "C", and Avery reminded  
22 Randolph of a meeting they had -- and that's your initials right  
23 there that you wrote in K.R., right?

24 A. Yes.

25 Q. With a friend Spencer Caldwell -- I don't know what that

1 letter is before the slash, and "M", 50 or 51, a/k/a Hank, who  
2 lived north of Keefe on Port Washington Road. You told that to  
3 Detective Heier, correct?

4 A. I could have.

5 Q. He goes on to state: Caldwell is his, Randolph's,  
6 girlfriend's brother. You told that to Detective Heier, didn't  
7 you?

8 A. I could have.

9 Q. Goes on to state Avery described Little "C", and Randolph  
10 then remembered him as a B-M -- which I assume stands for black  
11 male -- 36, 6 foot 1 inch or 6 foot 2 inch, slim to medium. You  
12 told Detective Heier that, didn't you?

13 A. I could have.

14 Q. Curl. That refers to hairstyle, right?

15 A. I don't know what it refers to.

16 Q. Did you tell him curl?

17 A. No.

18 Q. Did you tell him 175 pounds?

19 A. No.

20 Q. Goes on to state: Avery stated that the woman -- and  
21 there's also your initials again, K.R. that you wrote in,  
22 correct?

23 A. Yes.

24 Q. And that's before the word in parentheses, victim, came over  
25 late afternoon to evening and spent all her money and wanted to

1     dope date. You told that to Detective Heier, didn't you?

2     A. I could have.

3     Q. Avery had oral sex and intercourse with her. You told that  
4     to Detective Heier, didn't you?

5     A. No, I would have never told him he had oral sex with a  
6     prostitute, no.

7     Q. You would never have told anything about any form of sex  
8     with a prostitute?

9     A. I could have, but not oral sex.

10    Q. Are you saying you wouldn't have used those words? Or are  
11    you saying that William Avery would never have had oral sex with  
12    a prostitute?

13    A. The William Avery I would know would never have oral sex  
14    with a prostitute.

15    Q. The William Avery you know might have intercourse if it was  
16    protected with a condom with a prostitute?

17    A. Oh, you'd have to ask him that. I don't know. But I've  
18    never known him to have sex of any type with a prostitute.

19    Q. Goes on to state: Avery did not give specifics as to when  
20    the girl was choked, but stated that the body was taken out in  
21    the early morning and placed in the back of the vehicle. You  
22    told Detective Heier that, didn't you?

23    A. I could have.

24    Q. Goes on to state: Avery stated that the worker and Little  
25    "C" unloaded the dead body, because he said he was still wasted

1 and couldn't help. You told Detective Heier that, didn't you?

2 A. I don't remember that, but I could have.

3 Q. Goes on to state: The offense occurred Keefe Street drug  
4 house on 19th Street. That's what you told Detective Heier,  
5 isn't it?

6 A. No. He had showed me something about some girl last seen at  
7 a drug house on Keefe Street, and so that's where this comes  
8 from, yeah.

9 Q. Okay. So this comes from showing you something about a girl  
10 last seen at Keefe Street, right?

11 A. I'm assuming that's what this comes from. You'd have to ask  
12 the writer of this.

13 Q. Well, you just told me that he showed you something relating  
14 to a woman being found at Keefe Street drug house.

15 A. No, no. A woman being last seen.

16 Q. Last seen at a Keefe Street drug house?

17 A. Right. Right.

18 Q. And you -- that's what you recall him showing you.

19 Something about a woman being last seen at a Keefe Street drug  
20 house?

21 A. Or mentioning it to me, or something. We were in there 7, 8  
22 hours.

23 Q. Goes on to state: Randolph stated that he had been there  
24 previously to pick him up as he had never been inside himself.  
25 You told the Detective that, didn't you?



1 A. I probably did. I'd have told him whatever he wanted to  
2 hear.

3 Q. Goes on to state here -- and you had scratched out those  
4 first three words, right? Spencer Caldwell is?

5 A. No, I didn't. I never scratched out anything in this  
6 document.

7 Q. All right. Those three words were scratched out. But you  
8 wrote those initials above it, right?

9 A. Those are my initials.

10 Q. And you wrote them there, right?

11 A. Yes. Yes.

12 Q. And it goes on to state there after that scratch out:  
13 Spencer Caldwell was on Division of Intensive Sanctions at the  
14 address of North Port Washington Road at the time Randolph was  
15 at Caldwell's home and saw Little "C". You told that to  
16 Detective Heier, didn't you?

17 A. I could have.

18 Q. Goes on to state: Randolph states his girlfriend is  
19 Lorraine Bowers. Got a date of birth there. Address of 4712  
20 North 18th Street, and was also present at -- and there's a  
21 scratch out there with your initials above the scratch out,  
22 right?

23 A. Next to the scratch out above the words S-P something.

24 Q. And you wrote those initials there, right?

25 A. Yes.

1 Q. Caldwell's -- and then there's another scratch out and you  
2 wrote your initials right above there, right?

3 A. Yes. Yes.

4 Q. On the date in '98 when she and Randolph met Little "C".  
5 Right? Now, you told this to Detective Heier, didn't you?

6 A. I could have.

7 Q. Goes on to state: Randolph stated that Avery never provided  
8 anymore information on the worker who helped after the victim  
9 had died. You told that to Detective Heier, didn't you?

10 A. I don't remember that, but I could have.

11 Q. It goes on to state: Randolph viewed numerous CJIS photos  
12 of subjects, and was unable to identify Little "C" from the  
13 photos shown. Let's go to the next page. Strike that. We can  
14 go back to that previous page. I'm sorry. That was at the end  
15 of that sentence. Let's break this down a little bit. During  
16 this interview with Detective Heier, he showed you a number of  
17 photographs in an effort to try to identify Little "C", didn't  
18 he?

19 A. Yes. I remember that.

20 Q. And you were unable to identify Little "C" from those  
21 photographs, correct?

22 A. Right.

23 Q. Now let's turn to the next page. It states there Randolph  
24 identified CJIS photo 817448179 -- as William Avery. You did --  
25 you were shown a picture of William Avery by Detective Heier,

1 weren't you?

2 A. Yeah. I think that says Willie Avery.

3 Q. And you did identify that picture as Mr. -- as William  
4 Avery, right?

5 A. I don't remember. Yeah. Again, whatever they wanted me to  
6 say. I didn't write this, but yeah.

7 Q. Then let's read the last sentence right above your signature  
8 there. This is a true and correct statement which has been read  
9 to me as I followed along with Detective Heier. You wrote your  
10 signature after that sentence, right?

11 A. Yeah, at the bottom. Not after the sentence. My signature  
12 is a couple lines down, underneath the date and time.

13 Q. And next to your signature, and just one line above, says  
14 not handcuffed. You were not handcuffed during this time,  
15 right?

16 A. Yes, I was handcuffed one hand to the wall. Given  
17 cigarettes, which aren't listed. Oh, yeah. They are listed.  
18 Four cigarettes. But it was more than four.

19 Q. So you signed your name even though you say you were  
20 handcuffed on one hand?

21 A. Yeah.

22 Q. And even though it said not handcuffed?

23 A. Yeah, I was handcuffed, because I remember that thing on the  
24 wall to handcuff you to.

25 Q. And it says give three cups of coffee, cream and sugar. You

1 had three cups of coffee?

2 A. At least. At least.

3 Q. And it says one phone call. You phone called somebody, too?

4 A. I don't remember that, but I may have tried to call someone.

5 Q. And two bologna sandwiches underneath that, right?

6 A. Probably.

7 Q. Now, this interview with Detective Heier, as reflected there  
8 this occurred after an -- apparently after your attorney, Mr.

9 Caton, brought you to the Police, right? Told the Police that  
10 you had something to tell them about a homicide?

11 A. My attorney didn't bring me to the Police. The House of  
12 Correction staff transported me in the van. My attorney wasn't  
13 present. I didn't see my attorney until I arrived and was in a  
14 room.

15 Q. This all happened after you talked to your attorney and told  
16 him you had some information to provide the Police about a  
17 homicide, isn't that correct?

18 A. What do you mean when you saying this all happened? What?

19 Q. This interview happened after you told your attorney,  
20 Mr. Caton, that you had information to provide to the Police  
21 about a homicide?

22 A. No, no, no. My attorney set this meeting up, though. If  
23 that's what you're referring to, I remember that.

24 Q. He set this up after you told him you had some information  
25 to provide to the Police, right?

1 A. Could have. I could have said that.

2 MR. SMOKOWICZ: Deposition page 36, line 23, to page  
3 37, line 3. Or pardon me, line 7. Or line 11. I'm sorry.

4 MS. HOFT: You're on Page 33?

5 MR. SMOKOWICZ: 36, starting line 23, going to page  
6 37, line 11. Or -- yes, line 15.

7 Q. Question: He did tell you that and -- answer: He told me,  
8 quote, first I need to go talk to them, Keith, close quote.

9 Okay. Answer: Quote, and share some of the stuff you said and  
10 see if they want to talk to you. Question: And so you had --  
11 and so you said some things to Mr. Caton that made him

12 apparently, what you could perceive, to be of interest perhaps  
13 to the Milwaukee Police Department, right? Answer: Right.

14 Question: Okay. And so it was something you said that led your  
15 lawyer to make an arrangement to have a meeting with Detective  
16 Heier and perhaps some other Detective, is that --. Yes. What  
17 you're saying? And, in fact, what you told your lawyer was that  
18 you had some information about William Avery. Isn't that right?  
19 Right.

20 All right. Before we started this area of  
21 questioning, your lawyer marked as an Exhibit some testimony.

22 MS. HOFT: Objection, Your Honor, to the  
23 characterization.

24 MR. SMOKOWICZ: Can I finish the question, Your Honor?

25 MS. HOFT: Well, he referred to me as Mr. Randolph's

1 lawyer.

2 MR. SMOKOWICZ: I'm sorry. I apologize.

3 Q. Right before we started this questioning, Mr. Avery's lawyer  
4 had marked as an Exhibit some testimony that you provided in the  
5 criminal case against Mr. Avery. You did, in fact, provide some  
6 testimony in that case, correct?

7 A. Yes.

8 Q. But, in fact, when you got to that trial, you did not  
9 testify consistently with what's in that statement that we just  
10 read, correct?

11 A. Correct.

12 Q. However, during the course of your effort -- of your  
13 testimony in that case, there were certain questions asked of  
14 you where you could have said that I was forced to provide that  
15 statement. Or I was told what to say. Isn't that true?

16 MS. HOFT: Objection to the form, Your Honor.

17 THE COURT: No, he may answer, if he can.

18 THE WITNESS: Just saying I could have -- I said what  
19 I meant at the trial.

20 MR. SMOKOWICZ:

21 Q. Okay. And let me ask it this way. You never said in the  
22 trial of William Avery that the Police had forced you to say  
23 anything against William Avery, correct?

24 A. No one ever asked me that. I would have answered it, had  
25 they.

1 Q. So even Mr. Avery's lawyer never asked you that question?

2 A. No. In fact, I was hoping that Mr. Avery's lawyer would  
3 declare me hostile or something, and that his lawyer would come  
4 at me.

5 Q. Well, in fact you were called by the State of Wisconsin as a  
6 witness, were you not?

7 A. Yes. Subpoenaed.

8 Q. You were asked questions by the State prosecutor, weren't  
9 you?

10 A. Yes. You're referring to at Mr. Avery's trial?

11 Q. Yes.

12 A. Yes.

13 Q. Page 85 of Plaintiff's Exhibit 24. From your testimony.  
14 Question at line 17: Did he ever tell you about harming a  
15 woman? Answer: He told me about a case that he had been  
16 charged with. Of course we were in general population. He  
17 knows that I have some background in certain legal aspects. I'm  
18 not a practicing attorney, but what you call a jailhouse  
19 attorney. And because he knew me from the street, he had asked  
20 me to look at some things. And one of the things I looked at  
21 was a statement that the Police had supposedly got from him  
22 concerning a woman being harmed.

23 That's your answer to that question, right?

24 A. Yes.

25 Q. At that trial, right?

1 A. Yes.

2 Q. And the next question: And in that statement -- you read  
3 that statement, is that correct? And your answer was: Yeah.

4 A. Yes.

5 Q. And the next question: And in that statement he admitted  
6 responsibility for the murder, but said he passed out and didn't  
7 know what happened, is that correct? And your answer was: Yeah  
8 in that statement. Correct? That's your testimony?

9 A. Yes, that was my testimony in the courtroom.

10 Q. Page 89. Beginning at line 6. Question: With all this  
11 background, what did -- what did Mr. Avery tell you about the  
12 homicide? Answer: Mr. Avery, you know, told me that, you know,  
13 he had sadly, you know, sadly made the statement to the Police  
14 implicating himself in the drug charges, and that in relation to  
15 the homicide that, you know, he was kind of blurred about that.  
16 I know Mr. Avery drinks, and I've drunken with him. I've smoked  
17 marijuana with him.

18 That was your answer to that question, was it not?

19 A. Yes.

20 MR. SMOKOWICZ: Those are all the questions I have,  
21 Your Honor. Thank you.

22 THE COURT: Redirect?

23 MS. HOFT: Just briefly, Your Honor.

24 THE COURT: Okay. Redirect.

25 **REDIRECT EXAMINATION**



1 **BY MS. HOFT:**

2 Q. Mr. Randolph, so Mr. Smokowicz went over with you some of  
3 the testimony from William's homicide trial where you testified.  
4 Was there earlier testimony that you remember where you  
5 attempted to recant?

6 A. Yes.

7 Q. Do you remember what you testified to earlier in that  
8 testimony that Mr. Smokowicz went over?

9 MR. SMOKOWICZ: Your Honor, if there's testimony of  
10 that sort, I ask it be displayed to the jury.

11 THE COURT: It should be, if there's reference to it,  
12 so --

13 MS. HOFT: I'm trying to find it, Your Honor. I mean,  
14 it is a criminal transcript, and I'm just going to ask him what  
15 he remembers and I'll finish.

16 MR. SMOKOWICZ: Your Honor, I'm going to object if  
17 there is no evidence of this.

18 MS. HOFT: Well, there is evidence.

19 THE COURT: Said the witness testified to it, so -- if  
20 you want to cross examine, say it's false, that's fine.

21 MR. SMOKOWICZ: What I'm concerned about is --

22 THE COURT: Looking for it, and the witness has  
23 answered that he said it. So we'll see.

24 MR. SMOKOWICZ: Okay.

25 MS. HOFT: I'm done.

**RECROSS EXAMINATION**

**BY MR. SMOKOWICZ:**

Q. Mr. Randolph, I thought earlier your testimony, when I asked you questions, you said that no one ever asked you whether any of this was untrue in Mr. Avery's criminal trial, correct?

MS. HOFT: Objection, Your Honor.  
Mischaracterization.

THE COURT: Well, he's been asked if that is a mischaracterization. He may answer.

THE WITNESS: I thought you asked me something like could have said I was forced to make this statement. Could I have said. Something else you said, and --

MR. SMOKOWICZ:

Q. Well, in the testimony -- in the testimony that I did read, where you were asked questions by Mr. Williams about what Mr. Avery said about this homicide, you never said to Mr. Williams, quote-unquote, that's a lie. Mr. Avery never said anything about any homicide to me, did you? We read it. Those words --

A. No, no, no, no. Can I have -- no, no, no, no sir. She's right. Earlier in those transcripts there is a statement where I'm saying the State was visibly upset because as they were asking me the questions did Mr. Avery tell you I choked this woman? I'm saying no. The truth. I'm in open court.

Q. Okay. Fine. Let's go to the previous page. Because you

1 said earlier, right --

2 A. What I'm saying is there was a lot more in that.

3 Mr. Avery's trial transcripts.

4 Q. Fine. Let's --

5 A. Other than what you read that was asked of me and answered  
6 by me.

7 Q. All right. Let's look at the beginning of your testimony on  
8 page 84. Question: Mr. Randolph, do you know the Defendant,  
9 William Avery? Your answer was: Yeah. Right?

10 A. Um-hum.

11 Q. And you knew him, right?

12 A. Yes.

13 Q. Question: How do you know him? And your answer was: From  
14 my girlfriend. From a friend himself. That's true, isn't it?

15 A. Yes.

16 Q. Question: How long have you known him? And your answer  
17 was: Since around 1993. That's an approximately correct, isn't  
18 it?

19 A. Right. Approximately.

20 Q. Might be 1994, 1995?

21 A. '95, yeah.

22 Q. And that's what we went around in your deposition about,  
23 isn't it?

24 A. Yes.

25 Q. Question: And you know him from the streets? And your

1 answer was: Yeah. And that's true too, right?

2 A. Yeah. After meeting him. I didn't know him in the streets  
3 before.

4 Q. And question: Were you ever housed with Mr. Avery in a  
5 prison? And your answer was: Yes. Yes. And that's true,  
6 isn't it?

7 A. Yes.

8 Q. Question: And that was in a State prison, is that correct?  
9 And your answer was: Yeah, Wisconsin State Prison. That's  
10 correct, isn't it?

11 A. Yes.

12 Q. Question: Do you know a man named Antron Kent? And your  
13 answer was: No. Correct?

14 A. Correct.

15 Q. Question: Do you know a man named Jeffrey Kimbrough? And  
16 your answer was: No. Correct?

17 A. Correct.

18 Q. And that's true, isn't it?

19 A. True.

20 Q. Question: Now, you were housed with Mr. Avery in the State  
21 prison in Wisconsin. Did you ever talk to him about things?  
22 Personal things? And your answer was: Yes. Some things about  
23 my family. You know, some personal things. That's what you  
24 testified to, isn't it?

25 A. Yes.

1 Q. And that was true, wasn't it?

2 A. Yes.

3 Q. Next question: And could you tell us a little bit about  
4 your educational background? Answer: High school graduate from  
5 East St. Louis Senior High School in 1983. Associate Degree  
6 from Illinois Central College in East Peoria. Bachelor's Degree  
7 from Ohio State University. While in prison this time I  
8 finished that with correspondence courses. That's the way you  
9 testified, right?

10 A. Yes.

11 Q. And that was all true, right?

12 A. Yes.

13 Q. Question: Did Mr. Avery ever tell you that he wanted to  
14 confide in you? And your answer was: Mr. Avery and I have  
15 always confided in each other. That was your answer there,  
16 right?

17 A. Yes.

18 Q. And that was true, wasn't it?

19 A. Yes.

20 Q. Question: Did Mr. Avery every tell you that there was  
21 something bothering him he had to get off his chest? And your  
22 answer was: No, not in those words. That was your testimony,  
23 wasn't it?

24 A. Yes.

25 Q. And that was true, wasn't it?

1 A. Yes.

2 Q. Question: Did he ever tell you about harming a woman? And  
3 I believe this is the answer that we started with when we looked  
4 at your transcript. He told me about a case that he had been  
5 charged with. Of course we were in general population. He  
6 knows that I have some background in certain legal aspects. I'm  
7 not a practicing attorney, but what you call a jailhouse  
8 attorney. And because he knew me from the street, he had asked  
9 me to look at some things. And one of the things I looked at  
10 was a statement that the Police had supposedly got from him  
11 concerning a woman being harmed. That was your testimony at  
12 that time, right?

13 A. Yes.

14 Q. And that was true, wasn't it?

15 A. Yes.

16 MR. SMOKOWICZ: That's all I have, Your Honor.

17 THE COURT: Anything else?

18 MS. HOFT: No. No questions, Your Honor.

19 THE COURT: All right. You may step down,

20 Mr. Randolph. Additional witnesses?

21 MR. STAINTHORP: Yes, Judge. The Plaintiff calls  
22 Defendant Hernandez.

23 **GILBERT HERNANDEZ**, called as a witness, having been  
24 first duly sworn, on oath testified as follows:

25 THE CLERK: Please state your full --

1 MR. STAINTHORP: Good afternoon, Mr. Hernandez.

2 THE WITNESS: Good afternoon, sir. How are you?

3 MR. STAINTHORP: And is it Detective Hernandez?

4 THE CLERK: Counsel, one minute. Please state your  
5 full name and spell your last name for the record.

6 THE WITNESS: My full name is Gilbert Hernandez. And  
7 my last name is spelled H-E-R-N-A-N-D-E-Z.

8 **DIRECT EXAMINATION**

9 **BY MR. STAINTHORP:**

10 Q. I'm sorry for jumping the gun there. Is it Detective  
11 Hernandez or former Detective Hernandez?

12 A. I'm a retired Detective.

13 Q. And that's with the Milwaukee Police Department, correct?

14 A. Yes, sir.

15 Q. When did you become a Police Officer with the Milwaukee  
16 Police Department?

17 A. I basically started in 1977. That was immediately after  
18 high school. It was like an apprenticeship. And in 1979 I was  
19 promoted to Police Officer.

20 Q. So you became a Police Officer, promoted to Police Officer  
21 in 1979. At some point you became a Detective, is that correct?

22 A. Yes. That would have been 1993.

23 Q. All right. And then in 1993 were you assigned to any  
24 particular section of the Detective division?

25 A. From 1993 through 1995 I basically worked violent crimes,

1 which are your shootings, your stabbings. Subsequently in '95 I  
2 was put into the Homicide Division.

3 Q. And how long did you stay in that division?

4 A. Until I retired in 2012. And now I'm currently working with  
5 the Division of Criminal Investigation with the Wisconsin  
6 Department of Justice. That's as one of their Special Agents.

7 Q. Okay. Now, in the course of your employment with the  
8 Milwaukee Police Department -- and I'm not just talking about  
9 one particular time now, but throughout your employment with the  
10 Police Department as a Detective, you became familiar with the  
11 facts of the Maryetta Griffin homicide, correct?

12 A. Yes, I did.

13 Q. And you have learned from your work with -- in the  
14 Department, first of all, that she was a woman, correct?

15 A. Yes.

16 Q. You learned that she was a prostitute, correct?

17 A. Yes.

18 Q. You learned that she was a drug abuser?

19 A. Yes.

20 Q. You learned that she was essentially almost a street person.  
21 She lived on the street a lot?

22 A. Yes. That's correct.

23 Q. You learned that with respect to her homicide, she had been  
24 strangled?

25 A. That's correct.



1 Q. And in addition to being strangled, she appeared to have  
2 been beaten in some other way. She had some injuries to her  
3 face. Do you recall that?

4 A. I don't recall the exact injuries. They may have. I just  
5 don't know.

6 Q. And you recall that there was evidence that she had been  
7 sexually assaulted?

8 A. Yes.

9 Q. And you also learned that her body was recovered in what  
10 appeared to be an abandoned garage?

11 A. That is correct.

12 Q. Or at any rate a derelict garage. One that wasn't in active  
13 use, correct?

14 A. I know it was a garage, sir.

15 Q. Okay. And that was off of an alley, correct?

16 A. Yes.

17 Q. And you also learned that her body had been recovered on the  
18 north side of Milwaukee, correct?

19 A. Yes.

20 Q. Now, also in the course of your employment as a Detective  
21 you became familiar with certain -- several homicides that were  
22 connected to a serial killer, Walter Ellis, correct?

23 A. No, that's not correct, sir.

24 Q. You never became familiar with the Walter Ellis cases?

25 A. I was involved with the Walter Ellis cases, and I was

1 involved with the multiple women that Walter Ellis was involved  
2 with, yes. I'm sorry.

3 Q. So obviously you misunderstood what I was asking. You were  
4 familiar with the -- with several homicides that were connected  
5 to Walter Ellis, correct?

6 A. Yes, sir, that's correct.

7 Q. And those cases -- all of the victims that were connected to  
8 Walter Ellis were female, correct?

9 A. That's correct.

10 Q. They were all either engaged in prostitution, or in one case  
11 close to prostitution, correct?

12 A. That's correct.

13 Q. And the one exception that I'm referring to is Jessica  
14 Payne, who probably wasn't directly involved in prostitution,  
15 but was very -- was essentially being prostituted by someone  
16 else. Someone was attempting to force her into prostitution.

17 A. I did work on the Jessica Payne case, but there are so many  
18 of the cases that I've worked on, I don't want to get it  
19 confused.

20 Q. Well, let me tell you about Jessica Payne. She was the 16  
21 year old. Does that refresh your recollection? And she -- of  
22 all these women, she's the only non-African-American woman.  
23 She's white.

24 A. Okay.

25 Q. Still doesn't refresh your recollection?

1 A. No. But I did work on it, sir.

2 Q. Okay. Fine. At any rate, the cases that were connected to  
3 Walter Ellis were all prostitutes. Or close to prostitution.  
4 You would agree with that?

5 A. Yes, sir, I would.

6 Q. And they were all persons who were involved in drug use,  
7 correct?

8 A. That's correct.

9 Q. And they were all people who were either street people, or  
10 close to street people?

11 A. Yes.

12 Q. And many of the victims of the homicides that were linked to  
13 Walter Ellis were strangled, correct?

14 A. Yes.

15 Q. And some had additional injuries besides being strangled?

16 A. Some may have had some defense wounds.

17 Q. Okay. And I think there were 1 or 2 that maybe additionally  
18 were stabbed. Do you recall that?

19 A. I don't recall that. I'm sorry.

20 Q. So primarily you recall that these victims were -- the cause  
21 of death was strangulation, correct?

22 A. Yes.

23 Q. And I think you already said, many had wounds beyond that,  
24 correct?

25 A. I don't -- I wouldn't disagree with you, sir, on that.

1 Q. And that in these cases they had been sexually assaulted?

2 A. Yes.

3 Q. And that many of these bodies were left in abandoned areas,  
4 correct? In derelict areas?

5 A. Yes.

6 Q. And that the majority -- in fact I think 9 out of the 10  
7 cases, the bodies were recovered -- might even be 10 out of  
8 10 -- they were recovered on the north side of Milwaukee?

9 A. Yes. Most of them were from the north side of Milwaukee.

10 Q. And that's where the bodies were recovered?

11 A. Yes.

12 Q. And, in fact, there were 10 total cases that were associated  
13 to Walter Ellis, correct?

14 A. That number sounds pretty close.

15 Q. Okay. And, in fact, in 7 of those cases he was actually  
16 criminally charged with the homicides, correct?

17 A. Yes.

18 Q. And then there were 3 other cases -- one of them being  
19 Jessica Payne -- do you recall that?

20 A. Yes.

21 Q. And he wasn't, in fact, charged with the Jessica Payne case,  
22 because in fact someone else was charged with that case,  
23 correct?

24 MR. STAINTHORP: I don't think there was an objection.

25 THE WITNESS: I'm sorry. I know that there were some

1 cases that were not charged.

2 MR. STAINTHORP:

3 Q. Okay. But they were nevertheless associated with having  
4 been committed by Walter Ellis, correct?

5 A. Yes.

6 Q. And that association was that his biological material was  
7 found in or on the bodies, or close to the bodies, of all these  
8 10 women, correct?

9 A. Yes.

10 Q. And in many cases that was biological material that was  
11 semen that was found either in the vaginal, oral, or rectal  
12 cavities of the women, correct?

13 A. On the body, yes.

14 Q. Well, precisely. And in one case -- I believe Ms. Stokes --  
15 the material was actually found on the body. On her left thigh.  
16 Do you recall that?

17 A. Yes, I do.

18 Q. So all of these 10 cases all have biological material  
19 recovered from them that is associated with Mr. Ellis. It's his  
20 semen, correct?

21 A. Yes.

22 Q. And so of the seventh case he's charged with, it's the  
23 Jessica Payne case. You recall that?

24 A. Yes.

25 Q. And, in fact, someone else was originally convicted of the

1 Jessica Payne case, correct?

2 A. That's correct.

3 Q. And that was based upon statements that --

4 MS. YUAN: Your Honor --

5 MR. STAINTHORP: That were alleged to inculcate  
6 someone else?

7 MS. YUAN: Your Honor, I'm going to object. Can we  
8 have a sidebar on this?

9 MR. STAINTHORP: Judge, I think we dealt with this  
10 yesterday.

11 THE COURT: We went over this yesterday. It's -- the  
12 Court is going to allow the examination.

13 MR. STAINTHORP:

14 Q. So the person who's charged in the Jessica Payne case, that  
15 was Chaunte Ott? Correct?

16 A. I've not -- I know there were some cases that weren't  
17 charged.

18 Q. But you know in the Payne case someone else was originally  
19 convicted of that homicide?

20 A. I believe you're correct.

21 Q. All right. And that subsequently after the connection to  
22 Walter Ellis was made, that conviction was vacated. You  
23 understand that?

24 A. Which conviction was vacated?

25 Q. The conviction -- the person, Mr. Ott, who was convicted of

1 the Jessica Payne case. You know that that conviction was  
2 vacated?

3 A. Yes.

4 Q. And that subsequently -- strike that. And another case that  
5 was connected to Walter Ellis was one where by the time the  
6 biological material had been discovered, and connected to Walter  
7 Ellis, someone else had been tried and acquitted. You recall  
8 that?

9 A. I wouldn't disagree with you on that.

10 Q. And that was the Kilpatrick case?

11 A. That one I can't remember.

12 Q. You don't know the name. But you do recall there was a case  
13 where someone other than Mr. Ellis had been tried, acquitted?

14 A. I do recall that there were some cases that were not  
15 charged.

16 Q. Right. And that was before any connection was made to  
17 Mr. Ellis. Do you recall that?

18 A. No, I don't. I'm sorry.

19 Q. And then the 10th case is this case, isn't it?

20 A. Yes.

21 Q. And this case, the Maryetta Griffin case, the biological  
22 evidence in the case is identical to the -- identical in form to  
23 the biological evidence in the other 9 cases that were  
24 associated with Mr. Ellis, correct?

25 A. Yes.

1 Q. Now, you've indicated to the jury that you had some  
2 involvement in the investigation of these cases that were  
3 associated eventually with Mr. Ellis. But that didn't happen  
4 for -- until approximately 2009, correct? The association?

5 A. Yes.

6 Q. And so until that time, there had been some -- there had  
7 been some connections made between the various unsolved  
8 homicides of these women, but no identity given to the person  
9 who had allegedly committed these crimes. Do you want me to try  
10 that one again?

11 A. Would you mind, please?

12 Q. Yeah. Sure. You know, I'm going to ask it a different way.  
13 As of 2009, D.N.A. was recovered from Mr. Ellis, correct?  
14 Walter Ellis?

15 A. Yes.

16 Q. And it was then compared to D.N.A. that had been recovered  
17 from evidentiary materials in relation to several of the other  
18 at that point unsolved homicides of women?

19 A. We basically compared it to a large number of cases in our  
20 city.

21 Q. And at that point, with respect to 7 of the cases that you  
22 compared it to, there was a match between Mr. Ellis's D.N.A. and  
23 the D.N.A. recovered from biological material in the homicides,  
24 correct?

25 MS. YUAN: I'm just going to object to the form, given



1 the time frame.

2 THE COURT: The question was there were 7 cases that  
3 this D.N.A. was connected to?

4 MR. STAINTHORP: I'm asking -- yeah. The time frame  
5 I'm asking about, 2009. So in 2009.

6 THE COURT: That was established previous to that, so  
7 the Court will overrule the objection.

8 MR. STAINTHORP:

9 Q. Go ahead. Do you remember the question? Or shall I --

10 A. If you're asking for the exact time frame, I don't know.

11 Were these cases coming in with Walter Ellis's profile? Yes,  
12 they were. I can't tell you what time they were at.

13 Q. That's fine. But would you disagree with me -- actually, as  
14 the Judge notes, it's already been established that in 2009  
15 there was a connection made between the D.N.A. that was  
16 recovered from Mr. Ellis, and the D.N.A. that was associated  
17 with 7 of these other unsolved homicides. Do you have any  
18 reason to disagree with that?

19 A. No, I would not disagree with that.

20 Q. Okay. And as a result of that, Mr. Ellis was charged with 7  
21 of those counts of homicide, correct?

22 A. Yes.

23 Q. All right. All right. You actually before you had that --  
24 strike that. In 1998 -- so now I'm going back, from 2009 to  
25 1998. You were involved in the investigation into the Maryetta

1 Griffin homicide, correct?

2 A. Yes.

3 Q. And my understanding is that you have determined, looking at  
4 Police reports, that you were engaged in interviews with Mr.  
5 Avery on March the 23rd and March 24th of 1998, correct?

6 A. That's correct.

7 Q. Now -- and with respect to the March 24th, 1998, interview,  
8 or interrogation, that at that point Mr. Avery was being treated  
9 as a suspect in the Griffin homicide, correct?

10 A. Yes.

11 Q. With respect to the general manner in which you conducted  
12 interrogations back in 1998, and in particular in March of 1998,  
13 it was the policy of the Milwaukee Police Department not to have  
14 any contemporaneous recording via technological means of those  
15 interrogations, correct?

16 A. Yeah, we didn't have the -- the ability to do it. It wasn't  
17 set up at all. It was just --

18 Q. So there was no video, no audio, no stenographer such as the  
19 --

20 A. -- it would be nice, but no --

21 Q. -- the woman sitting next to you. And, in fact, the only  
22 persons present during those interrogations would be the Police  
23 Officers and the person being interrogated?

24 A. That's correct.

25 Q. And you generally, as a matter of practice, would not do an

1   interrogation with the suspect and someone else there also  
2   who -- unless in the unusual circumstance a lawyer was present.  
3   But otherwise you wouldn't have the person's friend there? You  
4   wouldn't have someone else?

5   A. No. It would normally be the -- two of the investigators.  
6   If a lawyer was present -- I've done it also with a lawyer  
7   present. And the potential suspect.

8   Q. Okay. And so -- and the person who was being interrogated  
9   would generally not have any means to make contemporaneous notes  
10   of the progress of the interrogation. That would not be your  
11   practice, would it?

12   A. If he wanted a pad of paper to take notes, I would be more  
13   than happy to give him a pad of paper.

14   Q. Was that a normal practice, that you would give a person  
15   being interrogated a pad and paper?

16   A. I never had anyone request one.

17   Q. Okay. So if it wasn't requested, you didn't do it.

18   A. No, I wouldn't.

19   Q. Right. And actually in terms of the general method of doing  
20   interrogations back in 1998, it was the practice of the  
21   Milwaukee Police Department if a person were giving a statement,  
22   that that statement would be handwritten out by the Detective  
23   who was doing the interrogation, correct?

24   A. Yes.

25   Q. And it was not your practice as a general rule to have the

1 person who was being interrogated write it out?

2 A. That's correct.

3 Q. So, in fact, the only record that was made of interrogations  
4 back in 1998 was the record that was made by you as a Detective,  
5 correct?

6 A. That's correct.

7 Q. Then if you did an interrogation, you would normally file a  
8 Police report, correct?

9 A. Yes. Correct.

10 Q. So if the person gave a statement, you would hand write it  
11 out at the time, and then attempt to have the person sign it.  
12 Correct?

13 A. You would ask, yes sir.

14 Q. In addition to that, you would create a typewritten Police  
15 report, correct?

16 A. Yes, sir.

17 Q. And that would be created by the Detective actually  
18 recording the Detective's account of the -- of the content of  
19 the interrogation, correct?

20 A. Yes. I would read the handwritten report, and I would  
21 dictate it. And one of the typists downstairs would type it up  
22 for me.

23 Q. But it wasn't like you were dictating directly to a typist.  
24 You were directing to some kind of recording?

25 A. You're right. You're right.

1 Q. Okay. So even though there wasn't a recording of the  
2 suspect who was being interrogated, there was a recording of  
3 your version of of --

4 A. -- yes --

5 Q. -- what the suspect said, right?

6 A. Yes. That's correct.

7 Q. So again, the record of what occurred was your record. It  
8 was not the suspect's record, correct?

9 A. That's correct.

10 Q. You also knew as an experienced Detective in 1998 that if  
11 you prepared a report of an interrogation and represented that  
12 certain things occurred, that if the suspect subsequently denied  
13 that those occurred, and there was no physical evidence that  
14 undermined your account, you knew that your account was going to  
15 be the one that was credited, correct?

16 A. I don't understand the question, sir.

17 Q. Okay. If you prepared a report and said the suspect said  
18 certain things during the interrogation, unless there was some  
19 physical evidence that undermined your account of what the  
20 suspect said, you knew that it was your account that was going  
21 to be credited, correct?

22 MS. YUAN: I'm going to object to the form of the  
23 question, Your Honor. I think that calls for speculation.

24 THE COURT: Overruled. It's -- what the witness said  
25 is relied upon in the Detective reports.

1 THE WITNESS: What -- I'm going to try to answer your  
2 question. When I'm interviewing a suspect --

3 MR. STAINTHORP:

4 Q. Sir, I don't think you're answering my question.

5 A. Start the question over again, please.

6 Q. Let's try it again. I'll make it more specific. You knew  
7 that if you wrote an account of what occurred in an  
8 interrogation, that unless there was physical evidence that  
9 undermined your account, the prosecutor was going to credit your  
10 account of the interrogation?

11 A. Would you explain to me what you mean by undermined?

12 Q. Okay. What I mean by undermine is that unless there was  
13 some physical evidence that tended to show that your account of  
14 the interrogation was unreliable or incorrect, the prosecutor  
15 was going to accept your version over the version of the  
16 suspect?

17 A. I don't believe -- I don't -- I don't understand the  
18 question. I don't -- I do not understand the question. I'm  
19 sorry.

20 Q. Fine. I'll try it again. You knew in 1998 that if you  
21 wrote up a report of an interrogation that claimed a suspect  
22 said something --

23 A. -- okay --

24 Q. -- and the suspect subsequently said no, I didn't say that,  
25 that unless there was some physical evidence that definitively

1 undermined your version, the prosecutor was going to believe  
2 your version over the suspect's?

3 A. No. Totally? No. I would --

4 Q. No, no, no. You answered my question. How many  
5 occasions -- how many occasions did you write an account of an  
6 interrogation in which you claimed the suspect said something  
7 and the suspect said no, I didn't, and the prosecutor said you  
8 know what? I think you're lying. How many times did that occur  
9 to you in your career?

10 A. I -- it's never happened to me, sir.

11 Q. Never happened, right? How many times did it happen that  
12 you wrote up an account of an interrogation. The suspect said  
13 no, that didn't happen. There was no evidence to undermine your  
14 version, and the prosecutor said I don't think you accurately or  
15 reliably recorded that suspect's statement?

16 A. I document what the suspect said.

17 Q. Sir, do you understand my question?

18 A. I'm trying to answer your question, sir.

19 Q. No. I'm asking how many occasions did a prosecutor say you  
20 know what? You said the suspect said such and such. The  
21 suspect says he didn't. I think your version, you, Detective  
22 Hernandez, is not accurate or reliable?

23 MS. YUAN: Your Honor, this has been asked and  
24 answered.

25 THE COURT: It has. He said it's never happened.

1 MR. STAINTHORP: My initial question was lying. Now  
2 I'm going to accuracy and reliability, Judge. That's the  
3 difference. The only difference. But perhaps --

4 THE COURT: The question was asked whether or not a  
5 prosecutor would say that the denial by the suspect is more  
6 reliable than that of the Officer? Is that -- that's the  
7 question?

8 MR. STAINTHORP: Yes.

9 THE COURT: All right. It's a different degree, so he  
10 may answer.

11 MR. STAINTHORP:

12 Q. Do you remember my question? Or do you want it over again?

13 A. I -- if you're asking me if my opinion or the suspect's  
14 opinion is higher, it would have to show on the evidence of the  
15 investigation -- what comes out that office, that statement,  
16 it's got to corroborate with the investigation. That's what you  
17 follow. Your evidence. And you're going after the truth. We  
18 always are. It's -- I'm not better than he is, he's not better  
19 than me. I document the statement, and then with the  
20 evidence -- the District Attorney was the one that is going to  
21 make the final decision.

22 Q. Sir, sir, I think you've answered.

23 A. I tried my best.

24 Q. I think you answered it in the first sentence.

25 A. Just trying to do my best, sir.



1 Q. So in fact, if there was no physical evidence that  
2 undermined your version of what occurred in an interrogation,  
3 there have been no occasions on which a prosecutor has said I  
4 find the suspect's version of the interrogation more accurate  
5 and reliable than you, Detective Hernandez?

6 A. I've been at the District Attorney's Office numerous times  
7 where I have been sent -- okay, we need more evidence. This is  
8 not going to make it.

9 Q. Not my question, sir.

10 A. Okay.

11 Q. My question is, that I'm understanding from your answer that  
12 there have been no occasions during your career as a Detective  
13 where a prosecutor, confronted with both your account of an  
14 interrogation, and a suspect's contrary account of an  
15 interrogation, has said that -- the prosecutor did not find your  
16 account accurate and reliable unless there was some evidence  
17 that undermined it. Is that correct?

18 A. If there's evidence that supports that document and it's  
19 truthful.

20 Q. But you know that the prosecutor is going to go with your  
21 version.

22 A. I can't -- I can't tell you what the prosecutor is going to  
23 say.

24 Q. Have you had any occasions -- any occasions on which the  
25 prosecutor did not go with your version, where there was not

1 evidence to undermine your version? Where it was just a matter  
2 of credibility? You said one thing, the suspect said another  
3 thing.

4 A. If it's supported by evidence, there's more of a chance that  
5 he might -- he will believe what the statement was. What the  
6 report was.

7 Q. I'm going to ask you one more time, because I still think  
8 you're not quite answering it. But then I'm done. Can you  
9 identify a single case in which your account of an interrogation  
10 was not accepted as accurate and reliable by the prosecutor  
11 because it was contradicted by a contradictory account of the  
12 suspect? Can you name me --

13 A. I'm sorry. I would answer it the same way. I apologize,  
14 sir.

15 Q. No, I want to know if you can name a single case where that  
16 occurred?

17 A. I've been doing this for 37 years, sir. I can't tell you.

18 Q. Okay. Well, during that 37 years can you recall a single  
19 case where that occurred? I gather the answer is no, because  
20 there's been a long delay here.

21 A. I'm thinking. I can't. I'm sorry.

22 Q. Okay. Now, in addition to the prosecutor having your  
23 report, your report would also go to other Police Officers,  
24 correct?

25 A. Yes. They would go into a file that the homicide Detectives

1 have.

2 Q. And you would expect those reports to be reviewed and relied  
3 upon by other Police Officers involved in the investigation?

4 A. That's correct, sir.

5 Q. Now, in addition, in this case are you aware that the Police  
6 report, your Police report, was released to the media and was  
7 the source of a newspaper article in the Milwaukee newspaper?

8 A. I'm not aware of that, sir.

9 Q. Okay. Well, we previously marked -- it's actually marked as  
10 a Defendant's Exhibit, and it's already in evidence, so I'm just  
11 going to ask you a little bit about this. Do you see that this  
12 appears to be a newspaper article headlined: Man admits to  
13 killing, report says?

14 A. Yes, I see that.

15 Q. And if you go to the end of the first paragraph of that, it  
16 attributes this story to a Police report. Is that correct?

17 A. Yes. Correct.

18 Q. Okay. So does that refresh your recollection that on  
19 occasion Police reports were released to the media and became a  
20 source of media reports?

21 A. Well, I'm aware that there's an open record policy. I'm not  
22 sure how that works or how they pick reports.

23 Q. So you're aware that a Police report -- and you were aware  
24 back in 1988 -- excuse me, 1998, that a Police report that you  
25 prepared could be released to the media and could then provide a

1 source for a media article?

2 A. Yes. Any report can be, I guess, through open records.

3 Q. And you expected, in that circumstance, that the media  
4 report would rely upon the reliability and accuracy of the  
5 Police report, correct?

6 A. I assume so.

7 Q. Now, in addition to the prosecutor, other Police Officers,  
8 and the media, your Police report in the regular course of  
9 business would often become an evidentiary material in criminal  
10 proceedings, correct?

11 A. That's correct, sir.

12 Q. And you knew that your Police report could both be used  
13 for -- to help you in testimony in a criminal case?

14 A. True.

15 Q. And it could also in certain circumstances, especially if it  
16 purported to be a statement of a suspect who was then criminally  
17 charged, could become an actual physical Exhibit in the criminal  
18 proceedings?

19 A. That's correct, sir.

20 Q. And so that physical Exhibit would be entered into evidence  
21 the same way we're entering matters into evidence here, and  
22 would go before the jury, correct?

23 A. Yes.

24 Q. So now we have the situation where your Police report, as a  
25 general matter of practice, was something that was authored by

1 you, you were the only witness besides the suspect to what --  
2 and I'm talking about an interrogation here -- you were the only  
3 witness as to what occurred during that interrogation. And that  
4 Police report could have results both with the prosecutor, with  
5 other Police, with the media, with the Courts, with juries, with  
6 Judges, and with guilty verdicts, correct?

7 A. That's correct, sir.

8 Q. So you had a huge responsibility when you filled out a  
9 Police report to get it right, didn't you?

10 A. That's correct.

11 Q. And you recognized that if you didn't get it right, the  
12 responsibility fell on you, correct?

13 A. No.

14 Q. Okay.

15 A. It's not my -- if I go in there and I go in for an  
16 interview, whether or not I come out --

17 Q. Sir, I think you've answered the question.

18 MS. YUAN: Your Honor, I'd ask that the witness be  
19 allowed to complete his answer.

20 MR. STAINTHORP: I don't think he's answered it.

21 THE COURT: He may answer.

22 MR. STAINTHORP: I'm sorry, Judge?

23 THE COURT: He can finish the answer.

24 THE WITNESS: I've done thousands and thousands of  
25 interviews and interrogations. If I walk out of there with a

1 blank sheet of paper? That's fine. That's fine.

2 MR. STAINTHORP:

3 Q. And as I thought, you're not really answering the question.  
4 With respect to the significance of the Police report that you  
5 created, you have now acknowledged that that Police report would  
6 have reverberations in several different matters. With the  
7 District Attorney, with the prosecutor, with other Police  
8 Officers, with the media, with the Courts, with Judges, with  
9 juries, and with potential convictions, right? You've  
10 acknowledged that?

11 A. Yes.

12 Q. Okay. So my question to you is this. If you didn't get  
13 that Police report right, the responsibility for all those  
14 consequences going forth from now is yours, correct?

15 MS. YUAN: I'm going to object. Vague.

16 THE COURT: It is vague. I don't know what you mean  
17 by responsibility.

18 MR. STAINTHORP:

19 Q. If you didn't get it right in the Police report, it was you  
20 who had caused all these effects going forward from that Police  
21 report. That being the prosecutor, other Police, the media, the  
22 Courts, juries, and verdicts, correct?

23 MS. YUAN: Same objection, Your Honor, as to the word  
24 right.

25 THE COURT: It's still pretty vague. I mean, if --

1 MR. STAINTHORP: Okay, Judge. I'll re-ask it.

2 Q. If you didn't get your Police report accurate and reliable,  
3 the effects of that inaccuracy and that unreliability  
4 reverberating on from that interview years into the future, that  
5 was caused by you, correct?

6 A. My reports are always accurate as far as what occurs in that  
7 room, sir. And I take my job very seriously.

8 Q. But my question is this. If you didn't get it accurate and  
9 reliable -- if your Police report was not accurate and reliable,  
10 and that is our assertion in this case, the responsibility for  
11 the consequences of that is yours, correct?

12 A. Myself and the person who's in that -- the other Detective  
13 in there. That's how we make sure that the report is correct  
14 and accurate. That's why we ask the suspect let's read it.  
15 That's why we make corrections right there in that room. If  
16 that individual sees something wrong with that report, he's  
17 asked well, we're going to change it. You can initial it.  
18 These are checks and balances between the two Detectives that --

19 Q. -- I'm sorry. Did someone tell you to talk about checks and  
20 balances again?

21 MS. YUAN: Objection, Your Honor. He's arguing with  
22 the witness, and I'd ask that the witness be allowed to finish  
23 his answer.

24 THE COURT: The appropriate objection is  
25 non-responsive.

1 MR. STAINTHORP:

2 Q. Okay. If you didn't get that report accurate and reliable  
3 and complete, the people who should be held responsible are the  
4 Detectives who were in that room doing that interrogation and  
5 producing that report, correct?

6 A. Once again, when I walk out of that room I do the best I can  
7 --

8 Q. -- can you answer my question? If you don't get that report  
9 accurate, reliable, and complete, should you and your partner in  
10 that room doing that interrogation with no contemporaneous  
11 record other than yourself, be the persons who are held  
12 responsible?

13 A. Again, I would tell you that there are checks and balances  
14 that that report is accurate, sir.

15 Q. Again I'm going to ask you one more time. Give you one more  
16 opportunity to answer this question. If you didn't get your  
17 Police report accurate, reliable, and complete, should you and  
18 your partner, the only witness other than the suspect who's in  
19 that interview room, be the persons who are held responsible for  
20 the failure to produce an accurate, reliable, and complete  
21 Police report?

22 A. I would say that you're speculating that it's wrong. And  
23 I'm telling you that it's right when I walk out of that room.  
24 That's why I asked, again, the suspect to go over the report.  
25 And my partner.



1 Q. I think you understand my question, don't you?

2 THE COURT: I think the last question was understood,  
3 which focusses on -- Mr. Hernandez, it's a hypothetical. If  
4 this report is inaccurate, it wasn't reliable, it wasn't  
5 complete, and you did the report, you would be responsible for  
6 the inaccuracy, the unreliability, and the incompleteness,  
7 right?

8 THE WITNESS: Yes. Yes, Your Honor.

9 THE COURT: Okay.

10 MR. STAINTHORP:

11 Q. And you would be responsible for all the effects of --

12 THE COURT: Now that was asked four times, and this  
13 witness is not competent to answer that question.

14 MR. STAINTHORP: Fine. I'll move on.

15 THE COURT: Because he doesn't know what the broad  
16 effects are of this report. We've established that it is the  
17 foundation, the spearhead of any criminal investigation.

18 MR. STAINTHORP:

19 Q. Now, in this case as we've already talked about, you  
20 conducted an interview with Mr. Avery on March the 24th of 1998?

21 A. Yes.

22 Q. And that was with Detective Phillips, correct?

23 A. That's correct.

24 Q. Now, before you conducted that interrogation, you knew  
25 several facts about the case, correct?

1 A. Yes.

2 Q. And you had actually discussed your interrogation with  
3 Detective Phillips before you went into the interrogation?

4 A. I probably would have discussed the case and reviewed the  
5 case, yes.

6 Q. All right. And you knew that Detective Phillips had  
7 actually talked to Mr. Avery the day before, that being March  
8 the 23rd, a Monday?

9 A. I believe -- yeah, you're probably right. Correct.

10 Q. And Detective Phillips told you before the start of the  
11 March 24th interview that he was very suspicious of Mr. Avery,  
12 in particular -- for several reasons, but one reason being that  
13 Mr. Avery on March the 23rd said he knew that Ms. Griffin was  
14 dead at around 8:00 or 8:30 in the morning. But, in fact,  
15 according to Detective Phillips no one knew about the body until  
16 11:00 a.m. that morning.

17 MS. YUAN: I'm just going to object, Your Honor. This  
18 mischaracterizes Detective Phillips' testimony.

19 THE COURT: Well, if the witness can answer -- the  
20 Court doesn't recollect exactly what that testimony was. So the  
21 jury will have to rely upon their collective memories for that.  
22 But the Court will allow the answer to the question.

23 THE WITNESS: I'll say that it's normal to discuss a  
24 case with my partner before I go do the interrogation. I can't  
25 tell you the contents of that communication, sir.

1 MR. STAINTHORP:

2 Q. All right. Detective Phillips in his testimony -- and I  
3 will represent to you -- said he considered it highly suspicious  
4 that Mr. Avery on the 23rd said he knew about the death of Ms.  
5 Griffin at 8:00 a.m. or 8:30 a.m. when, in fact, the body was  
6 not recovered or was not found until 11:00 a.m. That was  
7 something that he would have shared with you before you began  
8 the interrogation, correct?

9 A. I don't remember, but I assume he might have shared that  
10 with me.

11 Q. I mean, that would be something that Detectives would share.  
12 The kind of information Detectives would share before beginning  
13 an interrogation, correct?

14 A. I don't recall that, but it's common that we discuss before  
15 we go in the room to talk.

16 Q. And you also had information from an interview that you  
17 conducted two days before -- that being the Sunday -- with a  
18 person called Valerie Eubanks, in which she had told you about  
19 an incident where the victim in this case, Ms. Griffin, had had  
20 a large amount of money in large denominations. She considered  
21 that very suspicious and thought that likely Ms. Griffin had  
22 robbed someone. You had that information when you went into the  
23 interview?

24 A. I remember reading one like that, yes sir. I remember  
25 having that interview.

1 Q. So you had that information with respect to Ms. Griffin. In  
2 addition to that, Detective Phillips -- yeah, Detective Phillips  
3 testified that it was his theory that when a prostitute was a  
4 victim of a violent crime, including homicide, that in many  
5 cases it was the prostitute who had initiated the conduct by  
6 attempting to steal or rob from the -- either the customer or  
7 her pimp.

8 MS. YUAN: Again objection, Your Honor. I think that  
9 misstates, mischaracterizes Detective Phillips' testimony.

10 THE COURT: I don't think it does, so the Court will  
11 allow the answer.

12 THE WITNESS: Can you ask the question one more time?  
13 I apologize.

14 MR. STAINTHORP: Could I have it read back, please?

15 (Whereupon the preceding question was read back by the  
16 Reporter.)

17 THE WITNESS: I can't agree to that. Just so many  
18 situations. Not -- it's not always 100 percent that it's the  
19 prostitute that was aggressive and this is the reason why she  
20 got beat up. We don't know. I can't say for 100 percent, sir.

21 MR. STAINTHORP:

22 Q. No, I agree. And I'm not suggesting it's 100 percent. But  
23 in many cases in your career --

24 A. In some cases, yes, you're right, sir.

25 Q. You had determined that that was the genesis of the eventual

1 homicide of the prostitute, correct?

2 A. Of this homicide, sir?

3 Q. No, no. Just in general. I'm talking about general.

4 A. In general, yes. I mean, it can go either way, as far as  
5 who's the more aggressor.

6 Q. In this case you also had information by the time you went  
7 to interview Mr. Avery on the 24th that there was no question  
8 that Mr. Avery and Ms. Griffin had been together at some point  
9 on the day before her body was found. Her body was found on the  
10 17th, and so this would have been on the 16th that they had been  
11 together during that day. You had that information, correct?

12 A. I had that? I can't tell you if I had that information  
13 before, but I know that after the interview with Mr. Avery that  
14 I -- that he did indicate that he was with her.

15 Q. If, in fact, there had been information generated before  
16 your 3/24 interview with Mr. Avery that he had, in fact,  
17 acknowledged that he was with Ms. Griffin on the day before her  
18 body was found, you would expect that to be information that you  
19 had when you did the interrogation of Mr. Avery?

20 A. Yes.

21 Q. And in that situation you would have gone into the  
22 interrogation with at least a hunch that Mr. Avery was involved  
23 with the homicide of Ms. Griffin, correct?

24 A. Yes.

25 Q. And you would have given all this information that you now

1 had with respect to Ms. Griffin and Mr. Avery -- you would have  
2 had a strong suspicion that Mr. Avery was guilty of involvement  
3 in the homicide of Ms. Griffin?

4 A. He was a suspect, yes.

5 Q. Well, you had a strong suspicion that he was involved with  
6 it?

7 A. I can't remember exactly back 17 years ago exactly what my  
8 mind thought was back then. But I know he was a suspect.

9 Q. And you were interrogating him on the 24th as a suspect in  
10 the killing of Ms. Griffin, correct?

11 A. Yes, sir, I was.

12 Q. Now, Detective Phillips also told us that he had an  
13 interrogation technique which he sometimes used which involved  
14 the use of hypotheticals. I don't think you were present for  
15 that testimony?

16 A. No, I wasn't.

17 Q. But hypotheticals were situations in which he would lay out  
18 a certain scenario and then ask the person if they would either  
19 agree with that or add to that. So that is what a hypothetical  
20 is. Is that an interrogation technique that you have used?

21 A. No, I haven't used that.

22 Q. Are you aware of other Detectives using that interrogation  
23 technique?

24 A. I've -- yes, I've seen it. Yes.

25 Q. Okay. So in that situation where you are using a

1 hypothetical, you, the investigator, would lay out a certain  
2 possibility of how a crime occurred, and see if the suspect  
3 would agree with that or disagree with that, correct?

4 A. Yes.

5 Q. And so you could lay out a certain way in which the crime  
6 had transpired, and then ask the suspect, is that what happened?

7 A. I don't use that style, sir, so I'm not really -- how should  
8 I say? I -- I'm not quite sure -- I'm sure that there's been  
9 examples where they ask the subject. I'm sure some Detectives  
10 have done that. I don't know who they are, but I haven't  
11 practiced that, sir.

12 Q. I understand you said you didn't, but you are somewhat  
13 familiar with that technique?

14 A. Yes, I am.

15 Q. You would agree with me, would you not, that that is a  
16 dangerous interrogation technique because you are in fact --  
17 then are supplying information to the person you are  
18 interrogating?

19 A. You're not -- and again, I'm just saying is it dangerous? I  
20 don't know. I don't -- it depends how -- what kind of example  
21 you're using. If you're using examples from the crime scene or  
22 from the incident itself, yes, it's extremely dangerous. But if  
23 you're -- let's say -- take an example like totally different,  
24 not even close to the scene or this investigation, then it's  
25 probably okay. But I -- that's how I would answer your

1 question.

2 Q. Okay. And so as an interrogation technique it's dangerous,  
3 because then you don't quite know whether you're getting back  
4 information that you have fed to the suspect, or information  
5 that is originating from the suspect, correct?

6 A. Well, the information that you gain back from your suspect  
7 should be somehow trying to match with the evidence and the  
8 statements of witnesses. That's how you kind of determine if  
9 it's the good stuff that you're getting out of that interview or  
10 interrogation.

11 Q. But when you're doing an interrogation, you want to make  
12 sure you know what information is coming from the suspect, and  
13 what information is coming from you, the interrogator?

14 A. Yes. You have to be careful that you don't feed them, if  
15 you would.

16 Q. Because, in fact, then you would be contaminating the  
17 interrogation, wouldn't you?

18 A. A possibility, yes.

19 Q. And if that occurred, then in any Police report that was  
20 prepared you would have to be vigilant to record exactly what  
21 information you had provided to the suspect, correct?

22 A. What is recorded on that report is what the individual  
23 suspect is reporting, because that's his statement. It's not  
24 the investigator's statement.

25 Q. But if the individual suspect reported a certain version of



1 the incident, and you had previously given information to the  
2 suspect which tended to support that version of the event, that  
3 would be something that you would have to record in your Police  
4 report?

5 A. No. You record what the suspect is telling you.

6 Q. Okay. So your practice was you would record what the  
7 suspect was telling you, but not necessarily what information  
8 you had given to the suspect, is that correct?

9 A. Right. It comes to a part where -- let's say you may want  
10 to share with your investigators as far as an example that you  
11 may have used. But as far as what goes on that report, is his  
12 final statement.

13 Q. Okay. And not the context for the statement?

14 A. Pardon me, sir?

15 Q. Not the context for the statement?

16 A. The context is what the suspect is reporting to us.

17 Q. So the context is what the suspect is saying to you? Not  
18 what you said to the suspect?

19 A. That's correct, sir.

20 Q. Now, in fact, you have no actual recollection of that 3/24  
21 interrogation, correct?

22 A. Just what's on my report, sir.

23 Q. Okay. So -- but beyond what's on your reports, you have no  
24 live memory of that interrogation?

25 A. 17 years ago. No.

1 Q. Okay.

2 A. I mean, something could click, but as of right now -- I'm  
3 not sure what you're looking for.

4 Q. Well, no. I know that you've previously given testimony in  
5 this matter, and that in that testimony you said I don't  
6 remember this interrogation. And I'm just confirming that.

7 A. Yeah. That's true.

8 Q. That's still the case?

9 A. Yes.

10 Q. You have no recollection of this?

11 A. No.

12 Q. And obviously you prepared for your testimony here today?

13 A. I read some reports, sir.

14 Q. Okay. Well -- and you prepared for your deposition in this  
15 case?

16 A. When I took my deposition, yes. Yes.

17 Q. All right. And after preparing both for the deposition and  
18 for today's proceeding, you have no actual recollection of this  
19 interrogation other than what's in your reports?

20 A. Yes, sir.

21 Q. Okay. Now I'm going to show you what has previously been  
22 marked as 11-C and ask you if this is the report that you  
23 prepared -- one of the reports that you prepared of your  
24 interview of 3-24-98?

25 A. Yes, sir.

1 Q. Okay. And because it won't all fit on one page, we're just  
2 going to slide it up -- and I understand that the markings in  
3 yellow were not on the report when you prepared it, is that  
4 correct?

5 A. That's correct.

6 Q. But other than the markings on yellow, and the number that's  
7 here at the bottom, the Bates stamp, this is the report that you  
8 prepared, correct?

9 A. That's correct, sir.

10 Q. And this is your handwriting, correct?

11 A. Yes, I'm afraid it is.

12 Q. And this is the report that became a permanent record in  
13 this case, correct?

14 A. I'm sure it is, yes, sir.

15 Q. Became a permanent record in the criminal proceedings  
16 against Mr. Avery?

17 A. Yes.

18 Q. In addition to this, you did prepare a typewritten report,  
19 is that correct?

20 A. Yes, I did, sir.

21 Q. And I'll show you what's previously been marked as 11-D.  
22 And again, ignoring the portion that's highlighted, does this  
23 appear to be the typewritten report that was prepared?

24 A. Yes, sir, it is.

25 Q. And going to the bottom of this Exhibit 11-D, that is your

1 signature that appears on this report, is that correct?

2 A. Yes, it is, sir.

3 Q. And right above your signature, right above where it says  
4 reporting Officer, is the initials G.H. That's you?

5 A. Yes, sir.

6 Q. Slash C.N.L. would that be the person who -- the typist who  
7 typed it up?

8 A. I believe that's correct, sir.

9 Q. Okay. Now, this -- after -- strike that. The reports that  
10 were prepared by you in this case, they contain certainly highly  
11 incriminating admissions by -- which are attributed to  
12 Mr. Avery, correct?

13 A. Yes, sir.

14 Q. Okay. And those include that there was a fight between  
15 Mr. Avery and Ms. Griffin?

16 A. Yes.

17 Q. That Mr. Avery was awakened by Ms. Griffin going into his  
18 pockets and pulling out his money, correct?

19 A. Yes. You're right.

20 Q. That Mr. Avery grabbed Ms. Griffin's hand -- you see that?

21 A. I don't see it, but you're correct.

22 Q. That Ms. Griffin and he started to fight. And that's at the  
23 bottom of the paragraph which is highlighted in yellow. Do you  
24 see that?

25 A. Yeah, I see started to fight. Yes.

1 Q. That Ms. Griffin, who is referred to here as Mercedes,  
2 pulled away and ran towards the stairs, attempting to get away.  
3 You see that?

4 A. That's correct, sir.

5 Q. And that he then allegedly calls Ronnie and says get over  
6 here, I think I killed this bitch. Do you see that?

7 A. Yes, I do.

8 Q. And in this situation -- and -- oh, and then that there's  
9 then reference to getting rid of the body. You see that?

10 A. Yes.

11 Q. All right. Now, in this case there was no question that Ms.  
12 Griffin was the victim of a homicide, correct?

13 A. I'm sorry?

14 Q. I'm sorry. Yeah. I stepped away from the microphone. In  
15 this case there was no question that Ms. Griffin was the victim  
16 of a homicide?

17 A. Yes.

18 Q. So there was no question, this was not an accidental death?

19 A. No.

20 Q. Okay. And based on the statement as recorded in your  
21 report, you actually went to the District Attorney to seek  
22 homicide charges against Mr. Avery?

23 A. I -- there wasn't enough on that report to get a homicide  
24 charge on that report.

25 Q. Sir, my question was you went to the District Attorney?

1 A. That's correct.

2 Q. To attempt -- not just any District Attorney. You went to  
3 the homicide District Attorney?

4 A. Yes, I did.

5 Q. And you were attempting to get homicide charges, correct?

6 A. No, sir.

7 Q. Well, in fact charges were denied at that point, correct?

8 A. That's correct, sir.

9 Q. But you attempted to get charges, didn't you?

10 A. No, sir. I can add more if you'd like, sir.

11 Q. That's okay.

12 A. Okay.

13 Q. Well, you do recall giving a deposition in this case -- and  
14 I'm on Page 9, at line 11. And were you asked this question and  
15 did you give this answer. Question: In what capacity were you  
16 involved in developing Mr. Avery as a suspect? Answer: I would  
17 have to -- what I -- excuse me, what I remember is that I was  
18 doing a lot of interviews with a lot of prostitutes in the area.  
19 And I remember that there was a certain house pointed out, and I  
20 remember that house being associated with Mr. Avery and his  
21 brother, Lorenzo Frost. I remember taking this matter over to  
22 the District Attorney's Office, where it was reviewed by I want  
23 to say Ron Dague. And charges were denied at that point due to  
24 the amount of evidence at that point.

25 MS. YUAN: Your Honor -- sorry, I thought you were

1 finished.

2 MR. STAINTHORP: Okay. I'm actually done.

3 MS. YUAN: Your Honor, I just wanted to ask -- there's  
4 another portion I think that should be read in as to this  
5 particular question for completeness sake.

6 MR. STAINTHORP: I'll finish. Was Ron Dague a D.A. in  
7 the drug unit or the homicide unit? I want to say the drug  
8 unit. Yeah.

9 MS. YUAN: But that's not the portion I was thinking  
10 of. I need a minute to find it, but that's particularly related  
11 to your question to Detective Hernandez.

12 MR. STAINTHORP:

13 Q. Okay. And then Page 105, question at line 5. Question:  
14 You're pretty sure you went to the homicide Detective for --.  
15 "And" -- is your answer. Question: Just let me finish the  
16 question. To the best of your ability what is your recollection  
17 about what charges you went to pursue? Answer: I went there to  
18 the homicide -- I went to the Homicide Unit. I felt like I did.  
19 And what are the reasons why? How I felt about it, there's --  
20 there's -- there's like not a protocol, but most of your arrests  
21 for homicide, it normally goes in front of the homicide D.A., so  
22 he can sign off on it. Administratively sign off. So that may  
23 have been the reason I went to Mark first, so he can look at it  
24 anyway, and so he can sign off. Do you remember being asked  
25 those questions and giving those answers?

1 A. Yes sir, I do.

2 Q. All right.

3 MS. YUAN: And, Your Honor, I'd ask that the next  
4 question and answer that goes onto Page 106 of this deposition  
5 be read in for completeness sake.

6 MR. STAINTHORP: Judge, I think counsel can do that.

7 THE COURT: You can do it on cross.

8 MS. YUAN: Thank you.

9 MR. STAINTHORP:

10 Q. Now, as you know, in this case charges were -- homicide  
11 charges based on the information at that date were not approved,  
12 correct?

13 A. Yes, sir, that's correct.

14 Q. But you in fact continued your investigation, continued your  
15 work in this case, correct?

16 A. That's correct, sir.

17 Q. And you continued your efforts to have Mr. Avery -- or you  
18 made efforts to have Mr. Avery charged with homicide, correct?

19 A. I continued my investigation to see where my investigation  
20 would lead to.

21 Q. And, in fact, you -- in 2003 you picked up on this  
22 investigation again. Do you recall that?

23 A. Um --

24 Q. Okay. So let me tell you what you did in 2003. In 2003,  
25 one person you went to see was Valerie Eubanks, correct?



1 A. That's correct.

2 Q. You went to see her. She was in the jail, correct?

3 A. That's correct, sir.

4 Q. And Ms. Eubanks is the person who'd given you the  
5 information before you had the interview with Mr. Avery about  
6 Ms. Griffin apparently having a large amount of money shortly  
7 before the homicide, correct?

8 A. Correct, sir.

9 Q. So you went to see her in the jail to see if you could get  
10 some more -- some information about Mr. Avery, correct?

11 A. Yes.

12 Q. And you didn't get any, did you?

13 A. Can you -- more information?

14 Q. Correct. You didn't get anything to incriminate Mr. Avery?

15 A. I don't recall what I got out of there, but -- I remember  
16 dealing with her, but I don't remember the contents of that  
17 interview. I'm sorry.

18 Q. You don't recall any incriminating evidence of Mr. Avery  
19 that you got from Ms. Eubanks?

20 A. I don't, no.

21 Q. Now, you also went to Prairie Correctional Center, correct?

22 A. Excuse me, sorry.

23 Q. Do you need some water?

24 A. No.

25 Q. You went to Prairie Correctional Center and met with

1 Mr. Kimbrough, who was here today?

2 A. Yes, sir.

3 Q. And that was on October the 20th of 2003?

4 A. Yes, sir.

5 Q. And the same day you also met -- went to see a person called  
6 Antron Kent at the Green Bay Correctional facility?

7 A. That's correct, sir.

8 Q. And then shortly thereafter you went to see a Mr. Randolph  
9 at the Stanley Correctional Center in Wisconsin, correct?

10 A. Correct, sir.

11 Q. And in each of those cases you were attempting to develop  
12 evidence to use against Mr. Avery in a potential homicide  
13 charge, correct?

14 A. Yes.

15 Q. Okay. And my understanding is that you actually have no  
16 memory of those interviews?

17 A. I don't. I don't, sir.

18 Q. And certainly that's how you testified before, and that's  
19 still the case, is that correct?

20 A. Yes, sir.

21 Q. And that's after preparing for your deposition, preparing  
22 for trial. There is no memory of what occurred there?

23 A. Just what's in my report, sir.

24 Q. Okay. Now, you're aware that -- that subsequently, shortly  
25 after Mr. Avery was released from prison on the drug charges

1 that he was convicted of, he was charged with the homicide of  
2 Ms. Griffin, correct?

3 A. Yes, sir.

4 Q. And you've testified at the trial of Mr. Avery, correct?

5 A. Yes, I did.

6 Q. And you testified to the content of the statement that you  
7 claimed that he gave in March -- or on March the 24th of 1998?

8 A. That's correct, sir.

9 Q. And that statement was introduced into evidence and used  
10 against Mr. Avery in the criminal trial?

11 A. That's correct.

12 Q. And Mr. Avery was convicted of the homicide of Ms. Griffin,  
13 correct?

14 A. That's correct.

15 Q. And was sentenced to prison on that conviction?

16 A. That's correct.

17 Q. And that's where the matter stood until 2010, correct?

18 A. Yes.

19 Q. And that's when the case fell apart, correct?

20 A. The case fell apart?

21 Q. The case against Mr. Avery for the homicide of Ms. Griffin  
22 fell apart?

23 A. Yep. That's when they found out something, yes.

24 Q. Because that's when Mr. Avery requested that the biological  
25 material from the Maryetta Griffin case be tested for D.N.A.,

1 correct?

2 A. That's correct.

3 Q. And he specifically noted in his letter that he wanted it  
4 tested against the D.N.A. of Mr. Ellis, correct?

5 A. That's correct.

6 Q. Because he noted that there were significant similarities  
7 between the case -- the homicide of which he was convicted and  
8 the homicides with which Mr. Ellis was charged?

9 A. I don't know what his thoughts were, but that request was  
10 made by Mr. Avery.

11 Q. You had nothing to do with that request?

12 A. No, sir.

13 Q. And your understanding is that when the biological material  
14 from the Griffin homicide was tested, the oral swab showed semen  
15 from Mr. Ellis?

16 A. That's correct.

17 Q. Right?

18 A. That's correct.

19 Q. And under the factual scenario that you had developed, there  
20 was no possibility of Mr. Ellis being involved in a way that  
21 would leave his semen in the mouth of Ms. Griffin?

22 A. Can you ask that question one more time, please?

23 Q. Yes. Under the factual scenario as you had developed and  
24 laid it out in the statement from Mr. Avery, there was no  
25 possibility of Mr. Ellis's semen being found in the mouth of Ms.

1 Griffin?

2 A. If you're asking me -- ask the question one more time. I  
3 apologize, sir.

4 Q. So the scenario that you had --

5 A. -- correct --

6 Q. -- was Ms. Griffin going over to this drug house on North  
7 Palmer sometime in the early evening, correct?

8 A. Correct.

9 Q. Being there for some extensive period of time during the  
10 evening, correct?

11 A. Correct.

12 Q. Then at some time in the early morning hours of the next  
13 day -- so this would be Tuesday, the 17th -- there being this  
14 fight that you record?

15 A. That's correct.

16 Q. And Ms. Griffin being killed at that point?

17 A. That's correct.

18 Q. Right. And then her body being discovered sometime the next  
19 day, correct?

20 A. That's correct.

21 Q. And that that -- and were you aware that the autopsy -- the  
22 time of death is probably between 5:00 and 7:00 a.m.?

23 A. I was not.

24 Q. Okay. At any rate, under the scenario as laid out in the  
25 statement that you claim Mr. Avery made, Mr. Ellis could not

1 possibly have been involved in that, correct?

2 MS. YUAN: I'm just going to object. Misstates the  
3 evidence in the record. Detective Hernandez has taken multiple  
4 statements from Mr. Avery.

5 MR. STAINTHORP:

6 Q. Okay. I'm clearly referring to the statement of March the  
7 24th. The only one that you claim where Mr. Avery says he's  
8 responsible for the death of Ms. Griffin. With respect to that  
9 statement, there is nowhere in there that Walter Ellis has any  
10 role, correct?

11 A. In that statement?

12 Q. Correct.

13 A. No. Right. Correct.

14 Q. So according to the version of events that you laid out in  
15 this report that was presented to the jury at the trial of  
16 Mr. Avery, Mr. Ellis had no involvement in this homicide?

17 A. On this statement you are correct. Walter Ellis is not  
18 mentioned in there.

19 Q. Okay. Now -- and you were aware that based upon this new  
20 evidence that now involved Mr. Ellis's semen with the semen that  
21 was found in the mouth of Ms. Griffin, you're aware that  
22 Mr. Avery's conviction was vacated?

23 A. Yes.

24 Q. And you're aware that he got a determination that he was  
25 actually innocent of this crime?

1 MS. YUAN: I'm going to object to the form.

2 THE COURT: Well, if the witness knows, he can  
3 testify. If he knows what actual innocence means.

4 MR. STAINTHORP:

5 Q. Well, are you aware that the State of Wisconsin Claims  
6 Board -- and this is Plaintiff's Exhibit 10 -- found, based upon  
7 the D.N.A. evidence that had been discovered in 2010 that linked  
8 Walter Ellis to the murder the homicide of Ms. Griffin -- that  
9 the Claims Board found that Mr. Avery has provided clear and  
10 convincing evidence that he was innocent of the crime for which  
11 he was convicted and did not, by his act or failure to act,  
12 contribute to his conviction. Were you aware of that?

13 A. This is the first time I saw this, sir.

14 Q. Okay. So it sounds like you were not aware that the Claims  
15 Board had found that he's actually innocent of the charge?

16 A. This is the first time I saw that document, sir.

17 Q. And you recognize it as a -- there's a big difference  
18 between being found not guilty and being found actually  
19 innocent?

20 A. I do.

21 Q. Okay. And there is no question, is there, that the  
22 statement contained in your March the 24th report, handwritten  
23 by you, is flatly contradictory to a determination that  
24 Mr. Avery is innocent?

25 A. No. It shows me that -- that Walter Ellis had sex with her.

1 Q. Okay. So as far as you're concerned, you don't agree with  
2 the State of Wisconsin Claims Board decision that he has  
3 proven that he's actually innocent?

4 A. I feel that -- that Mr. Walter Ellis had sex with her.  
5 That's what it proves. It doesn't prove that he killed her,  
6 although that is his pattern. But we don't know. We know that  
7 he had sex with her.

8 Q. Well, you've already acknowledged to me that the evidentiary  
9 material in the Griffin case, the actual evidentiary material --  
10 not statements, but the actual physical evidence in the Griffin  
11 case -- is identical to the physical evidence in the 7 cases  
12 that Mr. Ellis was charged with?

13 A. I'm aware of that, yes sir.

14 Q. Right. It's the same?

15 A. Yes, sir.

16 Q. And you're aware that Mr. Ellis pled guilty to those 7  
17 homicides?

18 A. I was present.

19 MS. YUAN: Objection. That misstates the record.

20 MR. STAINTHORP: I'm sorry. Let me restate that.

21 Q. You're aware that Mr. Ellis was found guilty of those 7  
22 intentional homicides?

23 A. Yes.

24 Q. Yet nevertheless you would say that in this case, out of all  
25 of those 10 cases that are linked to Mr. Ellis, this evidentiary



1 material does not show that Mr. Avery is innocent, but merely  
2 shows that Mr. Ellis had sex with her?

3 A. That's correct.

4 Q. So you are in flat disagreement with the decision of the  
5 Wisconsin Claims Board that he has shown by a high preponderance  
6 of evidence that he's innocent of this?

7 A. I took that statement, and I believe that -- that statement  
8 that I took. And I think that Mr. Walter Ellis had sex with  
9 her, or we don't have all the pieces. We may not have all the  
10 pieces here. But I believe that -- the statement that Mr. Avery  
11 gave me that day. And I believe that Mr. Ellis had sex -- may  
12 have been there. I don't have all the pieces. I'm not perfect.  
13 I try to do the best we can with what the evidence shows us.

14 Q. What evidence do you have that Mr. Ellis had sex with Ms.  
15 Griffin in a time period that would allow for his semen to be  
16 found in her mouth after she's -- her body is found?

17 MS. YUAN: I'm just going to object. This witness  
18 isn't qualified --

19 THE COURT: I think you said Mr. Ellis. Did you mean  
20 Mr. Avery?

21 MR. STAINTHORP: I'll have to do it again, Judge.

22 THE COURT: Go ahead.

23 MR. STAINTHORP:

24 Q. What evidence do you have to show that Mr. Ellis had sex  
25 with Ms. Griffin in a time period that would allow his semen to

1 be found in her mouth at the time that her body is found by  
2 Police around 11:00 on the 17th?

3 A. What I can tell you is that as far as the time -- or I can't  
4 answer that, but the semen in her mouth just tells me that they  
5 had sex.

6 Q. What evidence did you develop in the course of your  
7 investigation, when you were investigating this case, that  
8 showed Walter Ellis had any -- I'm sorry, that -- yes. That  
9 Walter Ellis was in any way involved with Ms. Griffin?

10 A. I didn't. I didn't.

11 Q. Your theory in the case didn't have Mr. Ellis mentioned in  
12 the case, did it?

13 A. That's correct. I'm not disagreeing with you. You're  
14 correct.

15 Q. Okay. So where does Mr. Ellis come from? Does he jump out  
16 of the wall at the drug house? Where does he come from?

17 A. I'm just -- sir, I'm answering your question. I'm telling  
18 you the semen in her mouth just tells me that Walter Ellis had  
19 sex with her.

20 Q. Okay. And Walter Ellis had sex with her, and then she is  
21 found dead, correct?

22 A. Yes.

23 Q. The identical evidence that -- in the 7 cases presented  
24 against Mr. Ellis he pled guilty to, correct?

25 A. That's correct.

1 Q. That was the only evidence against him in those cases,  
2 wasn't it? There were no statements. There were no people who  
3 saw him in the vicinity?

4 A. I would agree with you there.

5 Q. So this was it. It was the D.N.A. evidence that linked him  
6 to biological material, mostly semen, I believe, on the victims  
7 that came from Walter Ellis. Exactly the same evidence as  
8 exists in this case, correct?

9 A. That is correct, sir.

10 Q. So -- do you question whether Mr. Ellis was guilty in the 7  
11 other cases?

12 A. I'm familiar with this case because I'm the one that took  
13 the statement.

14 Q. Okay. Do you question whether Mr. Ellis is guilty in those  
15 other cases?

16 A. No, I don't.

17 Q. So the only difference between those cases and this case is  
18 the statement that you claim Mr. Avery gave, correct?

19 A. The statement, and the statement from witnesses that put  
20 Maryetta Griffin walking into that house and never coming out  
21 again.

22 Q. Okay. There's no question that Ms. Griffin was in that  
23 house on the 16th, correct?

24 A. That's correct.

25 Q. You did have evidence that she left?

1 A. Excuse me, sir? I apologize.

2 Q. You had evidence that she had left in the early evening?

3 A. Yeah, when we found her body the next day in the garage.

4 Q. No. You had evidence that she had left the house in the  
5 early evening?

6 A. I have evidence?

7 Q. You did have evidence, didn't you?

8 A. That she left the house? That Maryetta Griffin left the  
9 house? You said I have evidence that she did leave?

10 Q. Yes.

11 A. I can't recall that right now.

12 Q. In fact, every other statement given by -- asserted to be  
13 given by Mr. Avery, other than yours, had Ms. Griffin leaving  
14 that house around 6:30, 7 o'clock in the evening, didn't it?

15 A. I don't -- I'm sorry. Repeat that question.

16 Q. Every other statement attributed to Mr. Avery in this case  
17 had Ms. Griffin leaving that house around 6:30 to 7:00 in the  
18 evening on the 16th?

19 A. That was Mr. Avery's account.

20 Q. Well, it was more than Mr. Avery's account, wasn't it?  
21 There were other witnesses there.

22 A. Ronnie Frost. Got that individual.

23 Q. How about Lakesha?

24 A. I can't recall Lakesha's statement. These are the  
25 individuals that were involved in the drug house.

1 Q. Not Lakesha.

2 A. Okay.

3 Q. If any other evidence had been available besides the  
4 statement of Mr. Avery that you claim you got, that would have  
5 been presented at his homicide trial, wouldn't it? Any other  
6 evidence?

7 A. Oh, yes, yes. Yes, I agree with you.

8 Q. So other than the statement that you claim you got from  
9 Mr. Avery --

10 A. -- yes, sir --

11 Q. -- you would agree that there is no difference between the  
12 evidence in this case and the evidence in the cases for which  
13 Mr. Ellis was found guilty?

14 A. I can't disagree with you, sir.

15 Q. And the account -- or the evidence that you developed in  
16 your investigation did not account in any manner for Mr. Ellis  
17 having sex with Ms. Griffin prior to her getting to the drug  
18 house on North Palmer, did it?

19 A. I'm sorry. I don't have any kind of indication of that,  
20 sir.

21 Q. All right. So, in fact, your statement here today -- your  
22 testimony here today that you think Walter Ellis had sex with  
23 her, but Mr. Avery killed her, is rank supposition, isn't it?

24 A. What I'm trying to explain to you, sir, is that we don't  
25 have all the pieces here. I have --

1 Q. And what I'm saying to you is that you have no evidence  
2 whatsoever, other than your assertion of Mr. Avery's statement,  
3 that your theory of the case has any validity whatsoever?

4 A. Mr. Avery said he was responsible, yes. That's what I have.

5 Q. That's it?

6 A. And witnesses having seen her walk in there, sir.

7 Q. And the fact that that is contradicted by the physical  
8 evidence in the case doesn't bother you a bit, does it?

9 A. What physical evidence?

10 Q. The physical evidence that shows Walter Ellis's semen in  
11 Maryetta Griffin's mouth.

12 A. I'm not disagreeing with that, sir.

13 Q. All right. But in terms of explaining that evidence, which  
14 is uncontradicted, you have no evidence that would explain how  
15 that happened, and yet at the same time Mr. Avery be the person  
16 who killed Ms. Griffin?

17 A. All -- what I'm telling you -- like I said to the jury, we  
18 don't have all the pieces here. I have Mr. Avery saying that  
19 he's responsible. Come get this body, what he told his brother.  
20 And all what I have is his statement to me and the witnesses  
21 having that victim walk in that house. Yes, is Mr. Ellis's  
22 semen in Maryetta Griffin's mouth? Yes. It shows me he had  
23 sex. That's what I have. And it's my feeling that we're  
24 missing something here.

25 Q. Okay. And you had a chance --

1 A. Just my feeling, sir.

2 Q. All right. Well, you had a chance to develop that feeling  
3 over the years you were a Detective, correct?

4 A. Yes, sir.

5 Q. And you were never able to develop any evidence, as opposed  
6 to supposition, that Mr. Ellis could have sex with Maryetta  
7 Griffin, and yet Mr. Avery be the person who killed her,  
8 correct?

9 A. I've never found any further information besides my  
10 statement. And the witnesses that have her walking in there,  
11 sir.

12 MR. STAINTHORP: Okay. I'm finished. That's all I  
13 have.

14 THE COURT: All right. Take a break, and then we'll  
15 do the -- is this witness going to be called in defense case in  
16 chief?

17 MS. YUAN: He will be. I do have some cross  
18 examination.

19 THE COURT: Yes. I just was worried about the time.  
20 I don't want to end past 5 o'clock.

21 MS. YUAN: Yes. Yes.

22 THE COURT: Okay. Don't discuss the case. See you  
23 after the break.

24 (Whereupon the jury was excused at 4:02 p.m.)

25 THE COURT: Okay. Take about 15.

1 (Whereupon a recess was called by the Court. Upon  
2 conclusion of the recess, the proceedings continued as follows  
3 when the jury was returned to the courtroom at 4:17 p.m.:)

4 THE COURT: Miss Yuan.

5 **CROSS EXAMINATION**

6 **BY YUAN:**

7 Q. Good afternoon, Detective Hernandez. How are you?

8 A. Good. Thank you.

9 Q. I just wanted to clarify a few points that you -- that came  
10 out during your testimony. There was one point where Attorney  
11 Stainthorp was questioning you and asking you if at one point  
12 after your first interview with Mr. Avery if you then went to  
13 the District Attorney's Office. Do you recall that?

14 A. Yep. Yes.

15 Q. Okay. And then there's a portion of your deposition that  
16 was read in. And if I recall correctly, part of your answer in  
17 terms of what you did when you went to the District Attorney's  
18 Office was to have it administratively released. You mentioned  
19 administratively released.

20 A. That is correct.

21 Q. Can you explain what that means?

22 A. Of course. You have your D.A.'s that handle the sexual  
23 assaults. You have the D.A.'s that handle general crimes. And  
24 then you have the homicide District Attorneys, that that's all  
25 they do is they concentrate on the City's homicides. If I go



1 out there and I arrest an individual on a homicide charge,  
2 and -- as with Mr. Avery, we're going to bring him in and the  
3 contents of that statement -- it wasn't my opinion. It wasn't a  
4 confession, okay? But I still had to go through the homicide  
5 District Attorney to sign off on the homicide charge. I will go  
6 back to the homicide D.A. Sit there with him and just discuss  
7 the case. What was said. What was done. And then he would  
8 just sign off. And then that would relieve him of ever being --  
9 of having that charge on his record, because at that point we  
10 didn't have it.

11 Q. You said at that point we didn't have it. And you also said  
12 you didn't believe you had a confession?

13 A. That's correct.

14 Q. Did you believe that statement when you were interviewing  
15 Mr. Avery with Detective Phillips -- that the admissions that  
16 Mr. Avery made -- and I can show the statement again in a  
17 minute. You don't believe that that was enough for a  
18 confession?

19 A. It was not. It was not.

20 Q. And why is that?

21 A. When you're interviewing someone and you want to make sure  
22 you've got the right suspects, you need more. You need more  
23 meat. I mean, it's got to tell me things. Like how he did it  
24 or how he choked her, if he did. Or how he beat her. He's got  
25 to give me the facts from the crime scene. Or facts that the

1 witnesses have. If he just walked in and says I just killed  
2 this person, that's nothing. That's meat. I mean, myself, and  
3 most of the investigators wouldn't be comfortable with that. I  
4 wouldn't be comfortable with that. That's not a confession.

5 Q. I'm just going to put a statement up, too, for you to look  
6 at. This is Defense Exhibit 1030. It's already been admitted  
7 into evidence. And Detective Hernandez, showing you this  
8 statement. But actually I'm going to -- I know I can't display  
9 the entire statement all at the same time. But if you look  
10 towards the bottom, there's a description of what happens when  
11 Mr. Avery is with the victim. Starting where my finger is  
12 pointing. Subject states that Mercedes and him started to  
13 fight. Do you see that?

14 A. Yes.

15 Q. Subject states that he was saying what are you doing?  
16 Subject states that Mercedes pulled and ran toward the stairs,  
17 attempt to get away. Subject states that he doesn't remember  
18 what happened. Subject states, quote, Ronnie, end quote,  
19 called. Subject told Ronnie get over here. I think I killed  
20 this bitch. Subject stated that Ronnie shouldn't have gotten  
21 rid of the body. Questioned subject as to --

22 THE COURT: Can you move that up a bit? I can't see.

23 MS. YUAN: Oh, I'm sorry. Thank you.

24 Q. I'll just repeat that. Subject stated that, quote, Ronnie  
25 end quote, shouldn't have gotten rid of the body. Questioned

1 subject as to how he killed Mercedes. Subject stated I'm  
2 responsible. I just don't remember how. And you wrote down  
3 what Mr. Avery told you in this statement?

4 A. That's correct.

5 Q. And the portion I read -- and if you need to look at the  
6 entire statement, I'd be happy to hand you this one page  
7 statement. Do you recall if there's any description of how  
8 Mr. Avery -- how Mr. Avery killed Mercedes if, in fact, he did?

9 A. There was no description.

10 Q. So Mr. Avery didn't -- when you're interviewing him with  
11 Detective Phillips on March 24th, 1998, Mr. Avery didn't tell  
12 you that he choked or strangled Mercedes?

13 A. No. No, he didn't.

14 Q. He didn't tell you that he removed portions of her clothing  
15 that was missing that you know from your review of the crime  
16 scene?

17 A. No. He gave no details at all.

18 Q. Did Mr. Avery tell you that he dumped her body in the  
19 garage?

20 A. No.

21 Q. Are those the type of facts that are important to you for it  
22 to be deemed a confession?

23 A. Yes, I would be more comfortable with something like that  
24 than what this was.

25 Q. Actually one more second here on this statement. I wanted

1 to draw your attention to the bottom there. That's your  
2 signature at the bottom, is that right?

3 A. That is correct.

4 Q. Okay. And then there's the date March 24th, 1998. And then  
5 there's also the time there, 10:00 a.m. to 12:30 p.m.?

6 A. That's correct.

7 Q. That's the length of time that this interview took place?

8 A. Yes. Two-and-a-half hours.

9 Q. Two-and-a-half hours. Okay. Detective Hernandez, you were  
10 also asked about whether or not you use hypotheticals when  
11 you're interviewing a suspect or interrogating a suspect. Do  
12 you recall that?

13 A. Yes.

14 Q. And your answer was you do not use -- or you never used  
15 hypotheticals when you interrogate a suspect. Is that correct?

16 A. That's correct.

17 Q. Okay. Explain to the jury what your style of interrogation  
18 is.

19 A. Most of the individuals that I interview or interrogate, I  
20 find out -- I find more -- I get more information by being  
21 respectful. Listening almost like a parent would talk to their  
22 child. A lot of these individuals have lived a rough and pretty  
23 violent life, and they're not -- if you confront them, or if you  
24 get them irritated, you're going to break that line of  
25 communication. You almost have to sit there -- you have to be

1 patient. And you have to talk to this individual.

2           What you don't want to get caught up is in -- in one  
3 of these situations where you start using examples. And if you  
4 find out that -- if that individual knows -- if you use an  
5 example, and that individual knows that you're lying, that the  
6 investigator's lying, then you might as well quit right there  
7 because he doesn't trust you. And he knows that you don't got  
8 anything. Okay? So you want to be honest -- honest. Don't get  
9 caught up with like what if this, and what if this. Because you  
10 can put yourself out there and destroy your credibility. Keep  
11 it truthful. Almost like a son -- talking to your daughter or  
12 your son. And be compassionate. And that's what works.

13 Q. And you would agree different individuals, different  
14 Detectives, have different interrogation styles, correct?

15 A. Just like different personalities, yes.

16 Q. And you just described your interrogation style, correct?

17 A. Yes.

18 Q. Would you ever provide details of how a homicide occurred to  
19 a witness or a suspect of a homicide?

20 A. That's the golden rule of homicide investigation. You keep  
21 the facts to yourself. You let the individual witness or  
22 suspect tell you, because once you start putting that evidence  
23 out there, then you don't -- how do you measure the credibility  
24 of your suspect or of your witness if you give them information.  
25 No. You just zip it and let them tell you the facts. And

1 that's how you evaluate if someone is being truthful or not.

2 Q. Detective Hernandez, while you were -- you did -- let me ask  
3 it this way. With the Maryetta Griffin homicide, was that one  
4 of your primary cases when that occurred? When that homicide  
5 occurred?

6 A. Back then we were getting close to 90-some homicides a year.  
7 So we were constantly busy. You're still working on an old one,  
8 and the next thing -- the next week it comes and you end up with  
9 3 new homicides over the weekend. And you try to get back to it  
10 because the family members are asking for answers on their loved  
11 ones, and you try to get back to them, but you've still got to  
12 take the fresh ones, because the sooner you start working on the  
13 fresh ones, the window of opportunity to try to solve is  
14 greater. And it's -- as the cases go on longer, unsolved  
15 longer, it gets more difficult. But yeah, we had a large case  
16 load back then.

17 Q. So you had a large case load. And Maryetta Griffin, that  
18 homicide was also one of the cases that you worked on?

19 A. Yes, it was.

20 Q. Okay. And back in 1998 when the homicide occurred, you and  
21 all the other homicide Detectives then were doing a lot of  
22 investigating on that matter?

23 A. Yes.

24 Q. Do you recall if the name Walter Ellis ever came up in 1998  
25 while you're investigating Maryetta Griffin's homicide?

1 A. It never came up.

2 Q. Did you ever speak with a witness or somebody that gave you  
3 any information that would have led you to the name Walter  
4 Ellis?

5 A. Spoke to a lot of witnesses, and we never came up with the  
6 name Walter Ellis. We were checking other sexual assaults that  
7 may be close to the pattern, and we never came up with any  
8 Walter Ellis. We were checking our databank. Or not -- I don't  
9 think back then we were checking the databank but we were  
10 checking every resource that we had available to us to try to  
11 identify the person responsible for this.

12 Q. And you mentioned having a lot of -- I think you said 90,  
13 approximately, homicides in 1998. And so, of course, every year  
14 there's more homicides that were being -- occurring in the City  
15 of Milwaukee, is that correct?

16 A. Yes.

17 Q. And you were a homicide Detective. Can you tell the jury,  
18 were a majority of the victims prostitutes?

19 A. We had female prostitutes, and we had male homicides. We  
20 had -- we had all kinds of homicides. I mean, all of our  
21 homicides varied from the south to the north. We had prostitute  
22 homicides. Of course we did. Did we have any idea that there  
23 was a serial killer there? I didn't.

24 Q. And you're talking back in 1998?

25 A. Yes.

1 Q. You were -- can you tell the jury in terms of once you  
2 became a homicide Detective, what your focus was within the  
3 Department. First it was general homicide Detective, is that  
4 right?

5 A. Well, when I was assigned to the Homicide Unit, that's -- I  
6 basically just worked all homicides. That's basically what I  
7 did. I worked homicide investigations, and worked with the  
8 homicide D.A. Those were basically my functions.

9 Q. At some point did you have a more specialized focus within  
10 the Homicide Department?

11 A. Back in 2007, since I was one of the older ones, we started  
12 a Cold Case Unit. And it was myself with Detective Kathy Hein,  
13 now Detective Spano.

14 THE COURT: What did you start?

15 THE WITNESS: I'm sorry. Back in 2007, the Milwaukee  
16 Police Department decided to start a Cold Case Unit to work on  
17 some of these cold case homicides. I think back then we were --  
18 like we had close to about 500 unsolved homicides. And they  
19 wanted to have a team to start to work on these cases and  
20 concentrate most of their time on these cases.

21 Q. And so back in 2007 you and Detective Spano were part of the  
22 Cold Case Unit?

23 A. Yes.

24 Q. And during your work in the Cold Case Unit, did you  
25 eventually develop Walter Ellis as a suspect?



1 A. Yes. What happened was myself and Detective Spano at the  
2 time -- we went to a couple seminars on how to run this Cold  
3 Case Unit properly. And we were learning a lot that --  
4 regarding D.N.A. And one of the things that we learned is that  
5 the technology of D.N.A. has improved so much that cases -- they  
6 were recommending that cases after -- or before 2000 should be  
7 resubmitted because the D.N.A. process has gotten way better.  
8 You used to need like a quarter size of blood. Now you could  
9 only use like a pinpoint of blood. And they can develop a  
10 profile.

11 So one of my main responsibilities was I would start  
12 pulling out boxes of some of these homicides where there was  
13 possible physical evidence of D.N.A. Like if there was a fight,  
14 maybe underneath the nails. If there's a sexual assault, maybe  
15 get some of the old vaginal slides that could have the profile.  
16 And that was one of my main duties. I was basically grabbing  
17 boxes of evidence and shipping them out to the Crime Lab.

18 Eventually I think -- I don't remember the time  
19 window, but then we ended up getting like three female homicides  
20 where it was the same profile. And then I think it was a couple  
21 months later maybe another three came. And again, I'm not sure  
22 of the sequence, but all of a sudden, we got a problem here.  
23 These are all killed by possibly the same profile. One  
24 individual. And that's when we started to ask for more help,  
25 because we were overwhelmed. And that's when we went to our

1 supervisors. And eventually we started a task force which  
2 consisted of a couple more individuals that were added to the  
3 Unit to help us keep up with the volumes of evidence that had to  
4 go out, and the volume of Crime Lab reports that came back  
5 identifying numerous victims. And we just -- we also got the  
6 Walter Ellis victims, but now we started getting more victims.  
7 Other females of other homicides. So it was overwhelming.  
8 Sorry.

9 Q. No, not at all. I wanted to clarify one point. You had  
10 said at one point there was a link of 3 female -- 3 homicides,  
11 female victims, to one profile.

12 A. Yes.

13 Q. Was that an unidentified profile? Where there was a link of  
14 3?

15 A. It was -- I'm sorry. It was an unknown profile. We didn't  
16 identify that profile. We didn't know about Walter Ellis yet.

17 Q. Okay. Because you mentioned the Walter Ellis homicides.  
18 That's because at this point you know --

19 A. --now I know, yes --

20 Q. -- who Walter Ellis is.

21 A. Right.

22 Q. Okay. So you were describing how when you formed the Task  
23 Force because you needed more help. Is that right?

24 A. Exactly.

25 Q. Maybe I should have had you explain a cold case. Maybe it

1 seems obvious. That's when a case hasn't been solved, is that  
2 right?

3 A. That's correct.

4 Q. So your focus and Detective Spano's focus in 2007 was on  
5 unsolved homicides?

6 A. That's correct.

7 Q. Okay. How is it, then, that you were able to hone in and  
8 identify Walter Ellis?

9 A. Well, after checking our data base -- I think in Wisconsin  
10 might be approximately like 600,000 profiles they have on file.  
11 And we were checking them against all of these profiles, and we  
12 weren't getting a match. We were checking again.

13 Q. Let me stop you one second. What were you checking? Were  
14 you checking the unknown profiles?

15 A. We were checking the unknown profiles.

16 Q. That was linked to the 3 homicides?

17 A. Yes.

18 Q. So you're checking that profile against the Wisconsin  
19 database?

20 A. Right. And there was so many search engines that we had.

21 We had one with -- checking the sexual assaults, again.

22 Anything that -- that could be that same -- like a woman found

23 in a vacant -- like most of the victims were found in vacant

24 properties. Anything close to that. But anyway, what happened

25 was we did what was called an offline search. And the offline

1 search is basically requested through the F.B.I., and where they  
2 check the N.C.I.C. -- which is the National Criminal information  
3 Center. And there's a name that popped up. Like for 3 or 4 of  
4 the homicides where this individual was stopped. And this  
5 individual was stopped like again on 4 of the -- on the days of  
6 4 of the homicide victims that were killed. And that kind of  
7 put up a red flag, because this individual was not in the D.N.A.  
8 databank.

9 Q. Should he have been in the databank?

10 A. He wasn't -- well, we didn't know what the profile was, so  
11 we were checking it just to see if we got lucky. But we weren't  
12 getting lucky there, either. Basically what happened was we  
13 eventually started looking for this individual, and we went to  
14 his home.

15 Q. Who was this individual?

16 A. This is Walter Ellis's -- we ended up going to his home.

17 Q. So his name had popped up in relation to 3 or 4 --

18 A. The offline -- the offline search gave us a couple names.  
19 And we looked at Walter Ellis. And now we wanted to speak to  
20 Walter Ellis, because he was kind of in the same area, and he  
21 was out -- stopped when the homicides occurred. And when we  
22 went to go talk to Walter Ellis --

23 Q. And I want to ask, did you actually go? Were you one of the  
24 Detectives that went physically to Walter Ellis's home?

25 A. Yes. Myself and Detective Spano went, along with two other

1 Detectives.

2 Q. Do you remember what year that was?

3 A. I can't off the top of my head right now. Sorry.

4 Q. That's okay.

5 A. And I ended up speaking with the girlfriend.

6 Q. Walter Ellis's girlfriend?

7 A. Yes. And she didn't want to let us in. And she said Walter  
8 was at work, and I gave her my business card. And by the time I  
9 got back to the office, Walter Ellis is calling me on the phone,  
10 wanting to know what was going on. And I indicated to him that  
11 I'd like to speak with him and set up an appointment. And he  
12 said okay. The next morning at 9:00 a.m. And I said sure, that  
13 would be good. And then what happened was the next morning I  
14 went to the house and no Walter Ellis. And it was at that time  
15 that we ended up getting a search warrant for the residence of  
16 that house, and --

17 Q. Stop you for one second. So you went to Walter Ellis's  
18 house the next day after you had made an appointment with him?

19 A. Yes.

20 Q. And he was not there?

21 A. That's correct.

22 Q. And then you testified to obtaining a search warrant for the  
23 house?

24 A. Yes.

25 Q. And did you remain at the house?

1 A. Yes.

2 Q. So you waited for the search warrant to come back  
3 authorizing a search of the house?

4 A. Yes.

5 Q. And then what happened?

6 A. We ended up going into the house, and Walter Ellis was not  
7 in the house. And we had actually ended up getting a toothbrush  
8 from his medicine cabinet. This toothbrush was subsequently  
9 taken out to the Crime Lab. And I want to say within a week of  
10 that profile from that toothpaste (sic) matched all of our  
11 unknown females. I mean of the unknown profiles that were found  
12 in the female victims.

13 Q. I'm sorry. You said tooth --

14 A. Toothbrush.

15 Q. Toothbrush.

16 A. Yes.

17 Q. So the D.N.A. found on the toothbrush was matched?

18 A. Right. Subsequently that night one of the supervisors  
19 decided to put out a felony -- a temporary felony warrant, which  
20 is if an Officer will come across this individual, he could --  
21 he's authorized to arrest him. Mr. Walter Ellis was found in  
22 one of our southern suburbs. I want to say it was Franklin, but  
23 I'm not sure. And he was in a hotel where he was located and  
24 arrested.

25 MS. YUAN: Thank you. Those are all of the questions

1 I have for you right now. I am reserving my direct examination.

2 THE COURT: Okay. Redirect?

3 MR. STAINTHORP: Yes. Briefly, Judge.

4 **REDIRECT EXAMINATION**

5 **BY MR. STAINTHORP:**

6 Q. So with respect to the statement that you claim you got from  
7 Mr. Avery on the 24th, while it was not as complete as you would  
8 like, you definitely understand that as reported by you that was  
9 an extremely inculpatory statement?

10 A. It's an important statement, yes.

11 Q. It's inculpatory of Mr. Avery, correct?

12 A. Yes. Yes.

13 Q. I mean, there's no question that Ms. Griffin is murdered,  
14 and there's no question that he, in that statement as reported  
15 by you, is claiming responsibility for that murder?

16 A. Besides I'm responsible. I'm responsible.

17 Q. So he's saying he's responsible, right?

18 A. Yes, sir.

19 Q. And he's providing some basis for -- according to you, for  
20 how that homicide occurred in terms of finding her robbing him,  
21 a fight starting, and then her ending up dead, correct?

22 A. That's correct, sir.

23 Q. And based on that statement as reported by you, there's no  
24 question that she is killed at the location of the drug house?

25 A. That's correct, sir.

1 Q. So while he doesn't have yet a lot of facts in there that  
2 you would like to have in a confession, there's no question that  
3 that is significant evidence against Mr. Avery, that statement  
4 as reported by you, correct?

5 A. I would agree, sir.

6 Q. All right. But partly because you recognize that it -- that  
7 you needed more, that's why you pursued the investigation in the  
8 early 2000's, going to the various other witnesses that you went  
9 to, including the ones we've talked about. Mr. Kent,  
10 Mr. Kimbrough, Mr. Randolph, Ms. Eubanks again?

11 A. That's correct, sir.

12 Q. So at that point you were seeking to have homicide charges  
13 brought against Mr. Avery, correct?

14 A. I was conducting an investigation. Where that investigation  
15 would lead? That's where I would go.

16 Q. But certainly the focus of your investigation at that time  
17 was Mr. Avery?

18 A. I can't -- I was aware of Avery's statement. I was not  
19 focusing just on Mr. Avery. I would do my interview -- or where  
20 my interview would lead me to, that's where I would go to.

21 Q. Well, you were going to these various people and asking them  
22 about Mr. Avery?

23 A. I was working on the Maryetta Griffin case and I was asking  
24 about the case itself.

25 Q. And you were asking -- well, you didn't ask Mr. Kimbrough,



1 Mr. Randolph, Mr. Kent about the case in general. You asked  
2 about Mr. Avery, correct?

3 A. They called us and they had information to offer me. I  
4 didn't go there and start to interview him. They called us.

5 Q. All right. The information you were trying to develop from  
6 those people was in relationship to Mr. Avery?

7 A. Yes. They told us that they had information regarding  
8 Avery, yes sir.

9 Q. And that was to support a homicide charge against Mr. Avery?

10 A. If that's where that led to, yes sir.

11 Q. Now, you've described the -- your involvement with the Cold  
12 Case Unit?

13 A. Yes, sir.

14 Q. When you became involved in that unit, you recognized that  
15 several of the victims of these unsolved homicides share a  
16 profile with Ms. Griffin, correct?

17 A. Yes. Correct.

18 Q. But you didn't seek to have any biological material from Ms.  
19 Griffin's case examined, did you?

20 A. We did send out some evidence from the Griffin homicide.

21 Q. You only did that after Mr. Avery --

22 A. That's correct. That's correct.

23 Q. You didn't do that, did you?

24 A. No, I didn't. No.

25 Q. No. With the other cases you -- you were involved in the

1 process of getting evidentiary material, sending it out to the  
2 Crime Lab, getting D.N.A. results from the Crime Lab, and then  
3 comparing those results both to each other and then eventually  
4 to a profile of Mr. Ellis, correct?

5 A. We didn't know about Mr. Ellis until those 3 profiles came  
6 up, because they were the same. And then we were kind of  
7 concerned. We got the same individual that just -- possibly  
8 killed 3 women.

9 Q. Exactly. So you were involved in getting the -- in having  
10 the evidentiary material, the biological material, from lots of  
11 homicides analyzed. In fact, more than the 10 that eventually  
12 got connected to him, right?

13 A. A lot of them, sir.

14 Q. Right. And then you found in your examination at that time  
15 that initially -- of the cases you had, 7 of them connected up  
16 to Mr. Ellis. Those were the 7 he got charged with, correct?

17 A. That's correct, sir.

18 Q. And even though you recognized that the profile of the  
19 victims matched Maryetta Griffin, you didn't attempt to have the  
20 evidentiary materials from her case sent out for updated D.N.A.  
21 analysis, did you?

22 A. The case -- that case was cleared, along with probably  
23 five-other-thousand cases that were cleared. I wouldn't be  
24 pulling out 5,000 cases that were already found guilty. I'm  
25 worried about my open cases. I'm not -- those are -- were all

1 resolved and sentences were out. Those cases were already --  
2 there was convictions on them. So I normally concentrate on the  
3 open cases.

4 Q. You knew that in this case Mr. Avery had denied that he was  
5 guilty?

6 A. No. In my statement Mr. Avery told me he was responsible,  
7 sir.

8 Q. In the statement as reported by you?

9 A. Yes, sir.

10 Q. Unsigned by Mr. Avery?

11 A. And my partner also observed.

12 Q. You and your partner?

13 A. Yes, sir.

14 Q. Unwitnessed by anyone else?

15 A. And the evidence matched, too, sir.

16 Q. Unrecorded in any other manner, that claimed that Mr. Avery  
17 had made a statement acknowledging responsibility for the  
18 homicide. Agreed? But -- but none of the other Police reports  
19 that were filed in this case claimed that Mr. Avery had made a  
20 statement acknowledging that he was responsible for the homicide  
21 of Ms. Griffin, correct? It was yours and Detective Phillips?

22 A. That's correct. That's correct.

23 Q. And that's both before and after your Police report. You  
24 know he was -- he was questioned again, after --

25 A. -- I talked to him again the second day, sir. Yes.

1 Q. And he denied it?

2 A. That's correct, sir.

3 Q. He denied any involvement in the homicide of Ms. Griffin at  
4 that point?

5 A. That's correct.

6 Q. And you were with a different Detective at that point?

7 A. That's correct.

8 Q. Who was that? That was Ms. Hein?

9 A. Detective Spano, sir.

10 Q. Who was then known as Detective Hein?

11 A. Yes.

12 Q. All right. And you understood, because you had testified at  
13 the trial of Mr. Avery, that he had pled not guilty to the  
14 charges against him, correct?

15 MS. YUAN: Your Honor, this is getting out of the  
16 scope of redirect. Or recross.

17 MR. STAINTHORP: Judge, if there's some issue of  
18 scope, then I think the questioning by Ms. Yuan --

19 THE COURT: Yeah, he may answer the question.

20 THE WITNESS: One more time. I apologize.

21 MR. STAINTHORP:

22 Q. Yes. All right. So I'll start this process again.

23 A. Yes, I was aware that he pled guilty. Not guilty.

24 Q. Pled not guilty?

25 A. That's correct. I'm sorry.

1 Q. And you knew that he was denying that he had given this  
2 statement to you acknowledging responsibility for the death of  
3 Ms. Griffin, correct?

4 A. Yes. That's why he went to trial, yes.

5 Q. Yet even knowing that, knowing that the profile of the  
6 victim, Ms. Griffin, matched the profile of these other cases  
7 that were still getting -- that were now getting connected up to  
8 Ellis, you did not seek to have any of the materials from the  
9 Maryetta Griffin case sent out for an updated D.N.A. analysis,  
10 did you?

11 A. I didn't know that the profile matched Maryetta Griffin,  
12 sir. I didn't know that the profile matched Maryetta Griffin at  
13 that time. I didn't know what the profile was.

14 Q. Of course you didn't. I understand. No one did.

15 A. Right.

16 Q. Because it hadn't been tested using that method of testing,  
17 had it?

18 A. But that case was closed because Mr. Avery was found guilty  
19 of that, sir.

20 Q. And he was found guilty based primarily on that statement  
21 that you claim he gave?

22 A. Yes. Yes, sir. That's correct.

23 Q. And so you, now, in charge of this Cold Case Unit, where you  
24 could have sent out that material from the Maryetta Griffin case  
25 to get it analyzed using updated D.N.A. testing materials, which

1 could have shown a match to Walter Ellis, you chose not to do  
2 that?

3 A. I had -- that case was closed, and Mr. Avery was sentenced.  
4 I had no -- I was concentrating on my open cases. If I took  
5 out -- and I wouldn't mind doing it, but in my mind I thought it  
6 was solved. He was found guilty. And now I want to work on my  
7 open cases. Then why not stop there and take every other case  
8 40 years from now that people were convicted and bring these  
9 back? Maybe we should start bringing all those back, too. But  
10 I didn't -- I was dealing with my open cases at the time. Which  
11 were, like I said, hundreds.

12 Q. Sir, you knew that this case, the Maryetta Griffin case,  
13 shared a fairly unusual set of circumstances with the cases that  
14 were connected to Mr. Ellis. That being prostitute, drug  
15 abuser, strangulation, found on the north side of Milwaukee, in  
16 a --

17 A. That fits every homicide that has occurred in this -- in the  
18 City of Milwaukee. It's either drugs, prostitution -- it's  
19 all -- it's the same. You can almost match them all together.

20 Q. So you're saying all the homicide cases in the City of  
21 Milwaukee are drugs, homicides, prostitutes?

22 A. Gang related.

23 Q. They all share that characteristic?

24 A. Those are -- in one hand those are probably the most reasons  
25 why homicides happen in this city. Drugs, alcoholism,

1 prostitution, gangs.

2 Q. You know that all the homicides in the City of Milwaukee  
3 don't have all of those characteristics. They may have 1 or 2,  
4 but --

5 A. Oh, another one is domestic violence.

6 Q. They don't have all of those characteristics. You knew that  
7 this was a pretty unusual profile, where there were drug users,  
8 prostitutes, mostly African-American women whose bodies were  
9 found on the north side of Milwaukee, who were for the most part  
10 killed by strangulation. That's a fairly --

11 A. Maryetta Griffin's homicide --

12 Q. Excuse me, sir. That's a fairly unusual profile?

13 A. I wouldn't say so, sir.

14 Q. So you think that happens all the time?

15 A. If I may, Maryetta Griffin walked into a drug house which  
16 was occupied by other people. And with most of Walter Ellis's  
17 homicides, women were meeting him in vacant buildings to have  
18 sex. This building, with Maryetta Griffin's situation, that  
19 wasn't a vacant building. It was occupied.

20 Q. Sir, sir, once again you're depending on your version of the  
21 facts. In fact, where --

22 A. You're asking me, sir, and I'm telling you.

23 Q. In fact, where Ms. Griffin's body was found was in an  
24 abandoned building. So if in fact --

25 A. But it started off in an occupied building, sir. And

1 that's -- Walter Ellis would not be moving bodies around. He  
2 was meeting them in vacant buildings. This is totally different  
3 from what you're trying to compare with that. And it's not.

4 Q. This was a garage that was essentially --

5 A. This was an occupied home, sir.

6 Q. But it was a garage that was essentially unused at the time.  
7 It was derelict?

8 A. That's correct, sir. But --

9 Q. And that fit the profile of Walter Ellis having sex in  
10 abandoned or derelict buildings, correct?

11 A. You're taking it from the back end. I'm taking it from the  
12 front end, where I have live witnesses that have this young  
13 woman walking into his drug house and never coming out.

14 Q. Okay. How about Rhondalyn (phonetic) Scott? Do you  
15 remember Rhondalyn Scott?

16 A. No, I don't.

17 Q. Okay. Rhondalyn Scott -- the report where she's seen late  
18 at night on the 16th to the 17th walking the streets right in  
19 the vicinity of where her body is found. Do you recall that?

20 A. I don't recall that.

21 Q. You don't recall that because, in fact, you're not going to  
22 look at any evidence that contradicts your asserted statement  
23 that Mr. Avery claimed that he -- that Mr. Avery said he was  
24 reliable for the --

25 A. Mr. Avery asked to have his case looked at, and it was done.



1 Like that.

2 Q. Not because of you?

3 A. I had no reason to go back and check his case. He was  
4 convicted already.

5 Q. All right. So as far as you were concerned, based on your  
6 statement Mr. Avery was consigned to prison for the rest of his  
7 life?

8 A. Mr. Avery was last with Maryetta Griffin, and she's dead.

9 Q. You said he was classed?

10 A. Last seen.

11 Q. I can't --

12 A. I'm sorry. Maryetta Griffin was last seen walking into  
13 Mr. Avery's house.

14 Q. Sir, that's -- substantial evidence in your case indicates  
15 otherwise, including the biological material that was related to  
16 Walter Ellis, and including the --

17 A. I understand that.

18 Q. From Rhondalyn Scott, is that she was seen --

19 A. I don't recall that one. I don't recall Rhondalyn Scott.

20 Q. Because you were going to ignore that evidence, correct?

21 A. I'm telling you, sir, that I don't recall it.

22 MR. STAINTHORP: Okay. Nothing further.

23 THE COURT: Anything else of this witness?

24 MS. YUAN: No.

25 THE COURT: All right. You may step down,

1 Mr. Hernandez.

2 THE WITNESS: Thank you, sir. Judge.

3 THE COURT: And we'll take a break. It's 5 to 5:00.  
4 We'll see you back at 9 o'clock. We'll take the next witness.  
5 Please don't discuss the case, only after all the evidence is  
6 in. We'll see you tomorrow morning at 9 o'clock.

7 (Whereupon the jury was excused at 4:56 p.m.)

8 THE COURT: Tomorrow morning, 9 o'clock.

9 MS. HOFT: Thank you, Your Honor.

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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF WISCONSIN  
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4 I, HEIDI J. TRAPP, Official Court Reporter for the  
5 United States District Court, Eastern District of Wisconsin, do  
6 hereby certify that I reported the foregoing Transcript of  
7 Proceedings; that the same is true and correct as reflected by  
8 my original machine shorthand notes taken at said time and place  
9 before the Hon. Rudolph T. Randa.  
10

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Official Court Reporter  
United States District Court  
13

14 Dated at Milwaukee, Wisconsin,  
15 this 23rd day of October, 2015.  
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